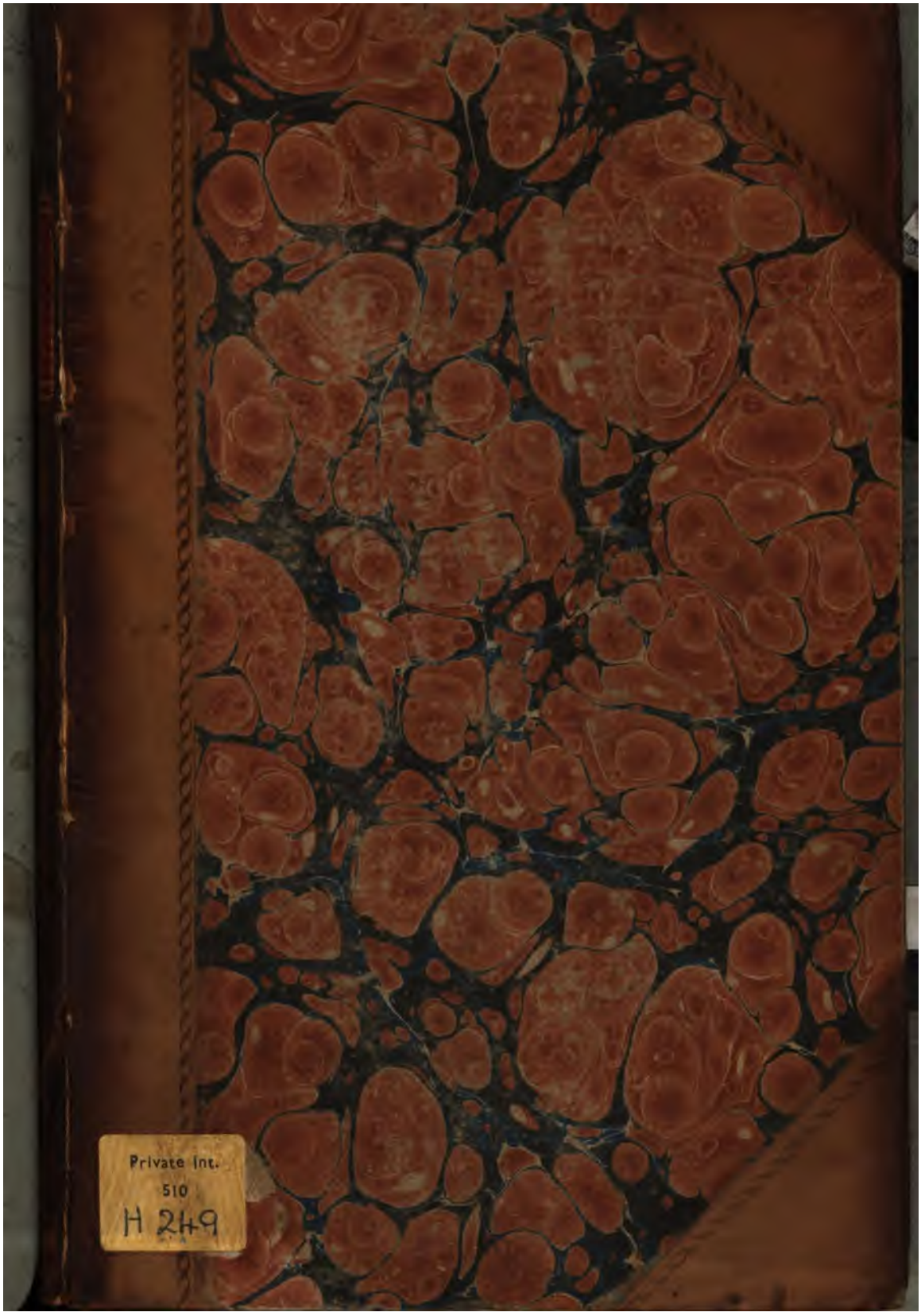

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Street,)

A TREATISE

ON THE

LAW RELATING TO ALIENS,

AND

DENIZATION AND NATURALIZATION.

BY GEORGE HANSARD, ESQ.
OF LINCOLN'S-INN, BARRISTER AT LAW.

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TO

JAMES RUSSELL, ESQUIRE,

ONE OF HER MAJESTY'S COUNSEL,

THE FOLLOWING TREATISE

IS,

WITH GRATITUDE FOR HIS PAST KINDNESS,

AND SENTIMENTS OF RESPECT,

DEDICATED BY

THE AUTHOR.

In following out his intentions the Author has thought it proper, in the first place, to give some account of the Statute Law, and then to show from the reported decisions on the subject, the different rights and liabilities of Aliens in this country. In treating of their rights and liabilities, it appeared to the Author that the liability of Aliens to the Criminal Laws of this country was not a subject for a separate chapter of itself; and that it might be, therefore, comprised under the chapter relating to liabilities of Aliens generally: but that the subjects treated in the different other chapters were, from the numerous cases arising on those subjects, proper to be treated separately.

In leaving the Treatise in the hands of the Profession and Public, the Author trusts for their kind indulgence and consideration, and only hopes that some benefit may be derived from the compilation.

Lincoln's Inn,
11 December 1843.

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ERRATUM.

Page 110, note (*x*), *for* 1 Rich. 2, c. 3, *read* 3 Rich. 2, c. 3.

A TREATISE, &c.

CHAPTER I.

INTRODUCTORY OBSERVATIONS.— THE STATUTE LAW RELATING TO ALIENS.

HISTORY affords little information as to the time when Laws relative to Aliens were first established, and it is considered a matter of some doubt as to when they were introduced. Some have thought that they were first introduced in the time of Henry the 2d, when, as it is stated, a law was made at the Parliament of Wallingford for the expulsion of strangers, in order to drive away the Flemings and Picards introduced into the kingdom by the wars of King Stephen; others, that they are an original branch of the feudal law, for by that law no man can purchase any lands, but he must be obliged to do fealty to the lords of whom the lands are holden; so that an alien who owed a previous faith to one prince, could not take an oath of fidelity in another sovereign's dominions: and the reasons given for establishing these laws were, that every man is presumed to bear faith and love to the prince from whom and the country in which he received protection during his infancy; and that one prince might not settle spies in another's country; but chiefly that the

revenues of the country might not be drawn to the subjects of another (*a*).

(*a*) *See* Bacon's Abridgment, vol. 1, p. 172. That the character and reason of alienage proceeded from homage, fealty, and the nature of allegiance which one man owes to his sovereign, and which an alien or stranger could not give to a sovereign of a country in which he was a stranger, appears from Sir William Blackstone, who, in his Commentaries, vol. 1, cap. 10, points out the difference of the three sorts of the people generally in a country, as natives, aliens, and denizens; and shows that, although local allegiance is due from an alien or stranger born, for so long a time as he continues within the dominion and protection of the king in whose land he is a stranger, still, from the nature of the natural allegiance which is due from all to the sovereign in whose country they are born, and which natural allegiance they could not yield to another sovereign, they must be aliens to another king than their own; for that it is a principle of universal law, that the natural-born subject of one prince cannot by any act of his own, no, not by swearing allegiance to another, put off or discharge his natural allegiance to the former; for this natural allegiance was intrinsic and primitive, and antecedent to the other, and cannot be divested without the concurrent act of that prince to whom it was first due. But see the note to the passage above referred to, by Sir John Taylor Coleridge, one of the present Judges of the Court of Queen's Bench, in his edition of Blackstone's Commentaries, in which he shows that natural allegiance may be divested by the concurrent act of the sovereign and the subject; and, for that purpose, refers to the case of *Doe* dem. *Thomas* v. *Acklam*, 2 Barn. & Cress. 779; which is a case holding that natural-born subjects of the Kings of England, who had, upon the recognition by His Majesty King George the 3d, of the United States of America to be free, sovereign, and independent States, in the Treaty of Paris in 1783, under the sanction of the British Legislature, 22 Geo. 3, c. 46, adhered to the United States of America, ceased to become the subjects of the Crown of England, and became aliens, and incapable of inheriting lands of England; and to the case of *Bright's Lessee* v. *Rochester*, which is reported in the 7th volume of Wheaton's Reports of Cases in the Supreme Courts of the United States, with respect to the disability of natives of Great Britain being aliens and in-

The first provision appearing in the statute book in favour of alien merchants, is in Magna Charta, 9 Hen. 3, c. 30, showing how they ought to be entreated here.

That laws with respect to the forfeiture of lands in the possession of aliens were early in force, appears in the reign of Edward the 2d, when an Act of Parliament was passed relative to the escheat of the lands of Normans; and it appears from that Act, that persons born under a foreign allegiance were then considered aliens.—See the 12th chapter of the 2d statute of the 17th year of that reign, the wording of which statute is, "that the king should have escheats of the lands of Normans, of whose fee soever they were, saving the service appertaining to the chief lords of the same fee. And this also was to be understood, that if any inheritance descended to any that was born in the parts beyond the sea, whose ancestors were, from the time of King John, under the allegiance of the kings of

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capable of inheriting land in America. *See*, however, the case of *Sutton* v. *Sutton*, 1 Russell & Mylne, 663, in which it was held that, under the treaty of 1794, between Great Britain and America, and the Act of the 37th Geo. 3, c. 97, by which the treaty was finally carried into effect, American citizens who held lands in Great Britain on the 28th of October 1795, and their heirs and assigns, were at all times to be considered, so far as regards these lands, not as aliens, but as native subjects of Great Britain.

And *see* note (*k*), *postea*, p. 65, as to the character which inhabitants of conquered or ceded countries bear towards the sovereign by whom such countries are so acquired, in respect of their allegiance, and as to their incapacity to hold lands and real estate, and to the liability of all such property in the hands of persons who are aliens to the sovereign to whom the conquered or ceded countries belong by virtue of such conquest or cession, to be forfeited in respect of such alienage.

France, and not of the kings of England, as then late it had happened of the barony of Monmouth, after the death of John de Monmouth (whose heirs were of Britain and other places), King Henry, by the foresaid occasion, recovered many escheats of Normans' lands out of the fees of other men, and gave them to be holden of the chief lords of the fee, by the services due and accustomed therefore."

The next Act of Parliament which appears in the statute book relative to the rights of aliens, is the 2d statute of the 25th year of the reign of Edward the 3d, and which appears to have been passed on account of the great mischiefs and damages which had happened to the people of England, as well because that the statutes ordained before that time had not been holden and kept as they ought to have been, as because of a mortal pestilence that then late reigned, and to provide for the quietness and common profit of the people convenient remedy; and by that statute it was declared, that the law of the Crown of England was, and always had been such, that the children of the kings of England, in whatsoever parts they were born, in England or elsewhere, were able and ought to bear the inheritance after the death of their ancestors, which law the said king, and the prelates, earls, barons, and other great men, and all the commons then assembled in Parliament, did approve and affirm for ever; and by that statute the children of certain persons therein named, and all children inheritors, who from thenceforth should be born without the allegiance of the king, whose fathers and mothers (*b*) at the time of their birth

(*b*) As to the construction of this statute, *see* the case of *Doe* dem. *Duroure* v. *Jones*, 4 Term Rep. 300, and *postea*, chap. 2, p. 93, note (*e*).

were, and should be, at the faith and allegiance of the King of England, should have and enjoy the same benefits and advantages, to have and bear the inheritance within the same allegiance as the other inheritors aforesaid in time to come; so always, that the mothers of such children should pass the sea by the license and wills of their husbands. And provision was made as to the mode in which bastardy pleaded against a person who was born out of this realm should be tried. And because there was some doubt as to whether children of English subjects born at Calais (at which place several of the king's subjects were residing after the conquest of that place by Edward the 3d), it was declared by the 10th statute of the 42d year of the same king's reign, that they should be held within the benefit of the provisions of the 2d statute of the 25th year of the same king's reign.

In the 27th year of the same reign provision was made by several Acts of Parliament (*c*) for the protection of merchant strangers in coming into and departing forth of this realm with their goods; and in the 27th and 28th years of the same reign two Acts of Parliament were passed (*d*), by the former of which provision was made as to the purchase of staple commodities by all merchants as well aliens as denizens (*e*);

(*c*) *See* statutes 27 Edw. 3, st. 1, c. 6, and 27 Edw. 3, st. 2, c. 2.

(*d*) *See* 27 Edw. 3, stat. 2, c. 3, and 28 Edw. 3, c. 13.

(*e*) The definition of the word "denizen" given in some of the English dictionaries is, a citizen; and from the same definition, and the wording of the above two statutes of 27 Edw. 3, stat. 2, c. 3, and 28 Edw. 3, c. 13, there is some ground for considering that the term denizen occasionally applied as well to a person English-born as to one originally an alien, but

and by the latter provision was made as to the manner in which inquests or proofs should be taken under those Acts between aliens and denizens, which inquests and proofs were to be taken *de medietate linguæ* (*f*). It must not be forgotten, at the same time, that aliens are entitled to the benefit of the statutes 13 Edw. 1, st. 4, 27 Edw. 3, st. 2, c. 9, and 36 Edw. 3, c. 7, which give to merchants, for the recovery of debts due to them, a remedy by statute merchant or staple, against the lands of their debtors (*g*).

The next step which we find taken with regard to aliens is in the reign of King Richard the 2d, when, in consequence of divers of the benefices in England having been given to aliens, and thereby the profits of the same withdrawn from England, provision was made, first, by the 3d statute of the 3d of Richard the 2d, and, subsequently, by the 12th statute of the 7th year of Richard the 2d, for the purpose of remedying such an evil, and aliens were thereby prohibited from taking

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subsequently made a denizen by letters patent; yet *see* Vin. Abr. tit. *Alien*, C. 2, pl. 5. However, for the sake of distinction, the legal definition of the word denizen would be, as it appears, the latter meaning.

(*f*) This statute has been confirmed by 8 Hen. 6, c. 29, and the last Act for consolidating and amending the laws relating to jurors and juries, *see* the 50th stat. of the 6th Geo. 4, s. 47. It is to be observed, that by the old law an alien born could not be a juror in a jury, for he was out of the allegiance of the king, and was not liege of the king.--Br. *Denizen*, pl. 2, citing 14 Hen. 4, c. 19.

(*g*) *See* Viner's Abridgment, tit. *Alien*, A. 9; and *see* Coke's Institutes, part 4, p. 238; and *see* also the Observations of Barrington on the Statutes, 2d edit. p. 81, with respect to the stat. of Acton-Burnel, 11 Edw. 1, which appears to have been superseded by the stat. 13 Edw. 1, c. 4.

benefices without the king's licence; and this provision was further carried into effect by the 7th statute of the 1st year of the reign of Henry the 5th (*h*).

In the 5th year of the reign of Henry the 4th, and in the 9th year of the same reign, further provisions as to land and other property of aliens were made; for by the 11th statute, made in the 5th year of his reign, provision was made for the tithes of lands which had belonged to aliens; and it was by the same statute declared, that the fermors, and all manner of occupiers of lands of aliens, should pay their tithes for the same, although the land was seised into the king's hands; and by the 7th statute, made in the 9th year of the same reign, all foreigners having lands, tenements, beasts, goods, or chattels, within any town, at the day of the grant of any tenth, fifteenth, or other tax, although they removed their beasts or goods out of such town after the day of the said grant, were made contributory with the inhabitants of such town; and by the same statute, proper authority was given to the commissioners of taxes to tax and assess such foreigners accordingly.

Previous to the reign of Richard the 3d, we find several provisions made as to the manner in which alien merchants should be allowed to trade in England;

(*h*) By the common law, an alien was capable of a benefice in England; for the church is one throughout the whole world. *See* Viner's Abridgment, tit. *Alien.* Upon the consideration of the above statutes relating to benefices, it has been held, that if any alien or stranger born be presented to a benefice, the bishop ought not to admit him, but may lawfully refuse him. *See* Gibson's Codex, vol. 1, p. 94, and Coke's Institutes, part. 4, p. 338.

following out the provisions of the stat. 9 Hen. 3, c. 30, and providing that the money obtained by their merchandises here should be employed by them in this country (*i*).

But, in the beginning of the reign of Richard the 3d, alien artificers, and particularly from Italy, appear to have increased to such an extent, as to make it necessary, for the benefit of English artificers, that some provision should be made for their protection; and, accordingly, by the 9th statute of the 1st year of the same reign it was provided, 1stly. That Italian merchants should sell their merchandises in gross, and employ their money in the commodities of this realm; 2dly. That strangers should sell their wares within eight months after their arrival, and employ their money here; 3dly. That strangers might carry away so much as they could not sell within eight months; 4thly. That strangers might remove their goods from one port to another; 5thly. That a stranger should not be a host of a stranger unless he were of his own country; 6thly. That aliens should not buy and sell wool or woollen cloth within this realm, nor make woollen cloth, nor deliver wool to that end; 7thly. That an alien should not be a handicraftsman; 8thly. That aliens should make no cloth within this realm; 9thly. That aliens should sell their wares in gross, and not by

(*i*) *See* particularly the statutes 9 Hen. 3, c. 30; 9 Edw. 3, stat. 1, c. 1; 11 Edw. 3, c. 5; 14 Edw. 3, c. 2, stat. 2; 25 Edw. 3, c. 2, stat. 4; 27 Edw. 3, c. 6, stat. 1; 27 Edw. 3, stat. 2; 2 Rich. 2, c. 1, stat. 1; 5 Rich. 2, c. 3, stat. 1; 11 Rich. 2, c. 7; 14 Rich. 2, c. 1 & 2; 16 Rich. 2, c. 1; 4 Hen. 4, c. 15; 5 Hen. 4, c. 7 & 9; 6 Hen 4, c. 4; 4 Hen. 5, c. 5; 18 Hen. 6, c. 4; 27 Hen. 6, c. 3; and 4 Edw. 4, c. 8.

retail; and, 10thly. That aliens should take no servants but the king's subjects. And divers forfeitures and penalties were given by the Act; but there was a provision contained in the Act, that it should not extend or be in prejudice, disturbance, damage, or impediment to any artificer, or merchant stranger, of what nation or country he was or should be of, for bringing into this realm, or selling by retail, or otherwise, any books, written or printed, or for inhabiting within this said realm for the same intent, or any scrivener, alluminor, reader, or printer of such books, which he had or should have to sell by way of merchandise, or for their dwelling within this said realm, for the exercise of the said occupations; the said Act, or any part thereof, notwithstanding. But in the 1st year of the reign of Henry the 7th, the first six provisions of the last-mentioned statute were repealed (*see* the statute 1 Hen. 7, c. 10); and by the 13th statute of 25 Hen. 8, the provisions in the statute of Richard, giving aliens a liberty to sell books, was also repealed. And in a subsequent statute, in the reign of King Richard the 3d, we find provision made as to strangers or alien artificers. (*See* the 12th statute of the 1st year of the reign of Richard the 3d.)

In the 31st year of the reign of King Henry the 6th, it was thought proper to provide redress for aliens who were injured by the king's subjects on the sea, or in any part of this realm; and, accordingly, by the 4th statute of that year, an Act was passed, intituled, a statute for providing redress for aliens injured in breach of amity, truce, or safe conduct; whereby, in case of injury to the body or goods of aliens in amity, league, or truce, or under safe conduct, the chancellor, and

any one judge of the King's Bench or Common Pleas, on complaint, might proceed against the offender, to compel restitution of the body or goods of the alien so injured.

During the reign of Henry the 7th further provision was made with respect to alien merchants (*k*).

It is to be observed that, by the 4th Act passed in the 14th and 15th years of the reign of King Henry the 8th, all Englishmen, who should become sworn subjects of foreign states, were declared to be aliens, and to pay the same duty as aliens; but, on returning into this realm, and tarrying and inhabiting here, such Englishmen were to be restored as subjects.

During the reign of Henry the 8th, we find further provision made by Parliament as to strangers or alien merchants; and by the 2d statute of the 14th and 15th years of the same reign, certain provisions were made as to proper apprentices to be taken by alien artificers, and as to the number to be employed by them, and as to the articles to be manufactured by aliens, and proper parties were appointed to examine their workmanship; but aliens were allowed by the Act to retain the apprentices then employed by them: a provision was, however, contained in the Act, declaring that it should not extend to the universities of Oxford or Cambridge, or within the sanctuaries of St. Martin's-le-Grand, within the city of London. And in the 21st year of the same reign another Act of Parliament was passed, being the 16th statute of the same year, whereby, after reciting a decree of the Star Chamber,

(*k*) *See* the statutes 1 Hen. 7, c. 2; 1 Hen. 7, c. 9; 3 Hen. 7, c. 11; 11 Hen. 7, c. 23.

directing that aliens should keep only two alien servants, and that alien housekeepers should bear charges as subjects, under the penalties of the 14 & 15 Henry 8, c. 2, and 1 Richard 3, c. 9; and that aliens should swear allegiance to the king; and that aliens should not set up new shops or chambers, wherein they should exercise or occupy any handicraft or mystery within this realm, upon pain to incur and run into such penalties as were contained in the statutes before that time made and enacted, as therein aforesaid; and that aliens should not assemble in conventicles, but in their halls; the same decree was confirmed, and the statute 14 & 15 Henry 8, c. 8, as to aliens taking apprentices, was made perpetual; but there was a provision contained in the Act, directly limiting the number of aliens to be employed by aliens in the universities, or in St. Martin's-le-Grand, to ten for each alien. And by the 13th statute of the 22d year of the same reign, it was declared, that no person or persons, strangers, being a common baker, brewer, surgeon, or scrivener, should be interpreted or expounded handicraftsmen, in, for, or by reason of using any of the said mysteries or sciences of baking, brewing, surgery, or writing; and by the 1st section of the 8th statute of the 22d year of the same reign, it was provided, that aliens born, although made denizens, should pay the same customs after they were made denizens as they did before (*l*).

(*l*) But the additional duties paid by aliens have been taken off by Act of Parliament. *See* Bl. Com. 16th edit. vol. 2, p. 316, note 15.

In or about the 32d year of the reign of Henry the 8th, it appears that divers aliens had then lately obtained letters patent of denization, declaring that every such denizen (*m*) should be as free as Englishmen naturally born within the king's dominions and obeisance, any acts or statutes made or to be made to the contrary notwithstanding; by reason whereof the said denizens refused to obey and perform such orders and directions as in former statutes were limited, prescribed, and declared, as well to and for such strangers born out of the king's obeisance, as at that time were made denizens, or that after should be made denizens, to the great hindrance and decay of the then handicraftsmen, being natural-born subjects; to remedy which, another Act of Parliament was passed in the same year, declaring the manner in which all letters patent for making denizens should be framed; and by that statute (being the 16th of the same year), and which recited the statutes of 1 Richard 3, c. 9; 14 & 15 Henry 8, c. 2, and 21 Henry 8, c. 16, it was declared that all strangers made denizens should be obedient unto the said recited statutes, and all others, and that all letters patent for making denizens should contain provisions that they should be obedient to the laws, and should specify particular privileges; and that no alien dwelling in Oxford or Cambridge, or the precincts of St. Martin's-le-Grand, should keep above two strangers as servants at one time; and that all aliens should be bound by the laws of this realm; and that no subject or denizen

(*m*) As to the meaning of the word denizen, *see supra*, p. 5, note (*e*).

should keep above four aliens at one time in his family, under a penalty of 10*l.* for each; but with a provision that the Act should not extend to customs, and giving every lord of Parliament liberty to employ six aliens at one time. And by the same Act it was declared, that no alien strangers, not being denizens, should take any leases of houses, under a penalty of 5*l.*; and all leases granted to strangers, artificers, or handicraftsmen, born out of the king's obeisance (not being denizens), of any dwelling-house or shop within this realm, or any of the king's dominions, are declared to be void and of no effect; and the person so taking such lease forfeits 100*l.*, and the person letting 100*l.* more; one moiety to the king, and the other to him that will sue for the same (*n*).

During the latter part of the reign of Henry the 8th, aliens appear to have been made denizens by private Act of Parliament (*o*); after which there are several Acts of Parliament in some of the subsequent reigns as to the making of denizens.

A public Act of Parliament was passed in the 4th and 5th years of the reign of Philip & Mary, relative to the conduct of certain Frenchmen, then being denizens; and certain aliens, not having license to remain, were

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(*n*) By the common law a lease to an alien artificer, either of a house or shop, was good between the parties, but forfeitable to the king. *See* Viner's Abridgment, tit. *Alien.* The clause referred to in the text as to leases has not been repealed by any subsequent Act of Parliament.

(*o*) These were made by certain private Acts of Parliament in the 34th & 35th years of the reign of King Henry the 8th, and the first of them appears to have been made with reference to two children of a person named Thomas Brandelying.

required to depart this kingdom; giving liberty, however, to certain to remain, on entering into recognizances; with provisions as to the manner in which the lands of aliens or denizens, ordered to depart out of the realm, should descend.

The first Act of Parliament naturalizing an alien which I have been able to find any reference to in the statute book, was passed in the 1st year of the reign of Queen Elizabeth (*p*), after which there are several instances of aliens being naturalized by private Act of Parliament.

In the 5th year of the reign of Queen Elizabeth an Act was passed forbidding the importation here of foreign wares made by handicraftsmen beyond the seas. *See* the statute 5 Elizabeth, cap. 7 (*q*).

It should be observed that, on the descent of the English Crown to King James, the 6th of Scotland and the 1st of England, all the parties subjects of that king, as King of Scotland, did not necessarily become

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(*p*) This was by private Act of Parliament, and made as to a person named Garsome Wroth, born in Germany. But in Viner's Abridgment, tits. *Alien, Naturalization,* it is stated that an alien, born in Portugal, who came into England with Beatrice Countess of Arundel, was naturalized by Parliament, and was enabled to purchase, &c., citing 3 Hen. 6, c. 55.

(*q*) This statute was continued by statutes 1 Jac. 1, c. 25, ss. 6 & 24; 3 Chas. 1, c. 4, ss. 11 & 24; and 16 Chas. 1, c. 4. It has been represented that the statute of Elizabeth above referred to, repealed all the Acts of Parliament passed in the reign of King Henry the 8th, prohibiting alien artificers from working for themselves. *See* Blackstone's Commentaries, vol. 1, p. 372. But there is no reference to these statutes in the Act of Elizabeth; and indeed there does not appear to be any other authority to the above effect than the statement made by Blackstone.

subjects of England, but were aliens; for the uniting the kingdoms by a subsequent descent could not make them subjects of that Crown to which they were born aliens; but all persons born in Scotland after that period became natural-born subjects of this realm, for they were born within the allegiance and under the protection of the Crown of England (*r*).

In the last-mentioned reign it was considered necessary that the naturalization should be confined to foreigners who were of the same religion as that then established in this country; and for that purpose an Act of Parliament was passed in the 7th year of that reign (being the 2d statute of that year), whereby, after reciting or mentioning that the naturalizing of strangers, and restoring to blood persons attainted, had been ever reputed matters of mere grace and favour, which were not fit to be bestowed upon any others than such as were of the religion established in this realm, it was declared that no person or persons, of what quality, condition, or place soever, being of the age of eighteen years or above, should be naturalized, or restored in blood, unless the said person or persons had received the sacrament of the Lord's Supper within one month then next before any Bill exhibited for that purpose; and also should take the oath of supremacy, and the oath of allegiance, in the Parliament House before his or her Bill be twice read; and for that purpose the Lord Chancellor or Lord Keeper of the Great Seal for the time being, if the Bill began in the Upper House, and the Speaker of the Commons House of Parliament for the time being, if the Bill began there,

(*r*) *See* Bacon's Abridgment, 7th edit. vol. 1, p. 165.

were directed at all times, during the session of Parliament, to administer such oath and oaths, and to such person or persons as by the true intent of the statute was to be administered; and the last-mentioned Act was to take place after the then session of Parliament.

In the 12th year of the reign of King Charles the 2d an Act was passed (being the 12 Charles 2, cap. 18) for the encouraging and increasing of shipping and navigation, whereby it was enacted, that no alien, or person not born within the allegiance of our sovereign lord the king, his heirs and successors, or naturalized, or made a free denizen, should exercise the trade or occupation of a merchant or factor in any lands, islands, plantations, or territories to his majesty belonging, or in his possession, or which might thereafter belong unto or be in the possession of his majesty, his heirs and successors, in Asia, Africa, or America, upon pain of forfeiture and loss of all his goods and chattels, or which were in his possession; and no goods were to be laded or carried from one port of England to another in the vessel of any alien not denizened or naturalized, under the penalty therein mentioned (*s*).

It is to be observed, that in the 13th and 14th years of the same reign an Act was passed, declaring that no children of aliens, under the age of twenty-one years,

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(*s*) But this Act was explained and enforced by 7 & 8 Will. 3, c. 22, s. 4. Naval stores may be purchased by Commissioners of the Navy on board neutral ships brought into port by the king's ships, 29 Geo. 2, c. 34, s. 38. Altered as to aliens residing in any place in the West Indies surrendered to his majesty, 34 Geo. 3, c. 42, s. 6. So as to any place surrendered generally, 37 Geo. 3, c. 63, s. 5; 45 Geo. 3, c. 32, s. 5.

should be permitted to be traders, and that no goods or merchandises should be entered in their names (*t*).

Aliens, however, appear to have been, to some extent, favoured in this reign; for, in the 15th year of the same reign, for the purpose of encouraging the manufactures of making linen, cloth, and tapestry, it was enacted by the 15th statute of the same year, that foreigners might exercise the trade of dressing and using of hemp and flax, and of making nets for fishing, and of making tapestry hangings; and in case of their really and *bonâ fide* setting up and using either of such trades by the space of three years in England, Wales, and Berwick-upon-Tweed, and taking the oaths of allegiance and supremacy, they were declared entitled to all the privileges of natural-born subjects, and were not to pay alien duty except in the event of their using and exercising merchandise into and from foreign parts, and then to pay the same during the space of five years, and no longer.

The next Act of any importance with respect to aliens was passed in the 29th year of the same reign, for the purpose of naturalizing the children of all English subjects born in foreign countries during the civil wars; and a similar Act was passed in the 9th and 10th years of William the 3d, relative to the children of such officers and soldiers, and others, the natural-born subjects of this country, who had been born abroad during the then late wars, the parents of

(*t*) *See* the 10th section of the 11th statute of the 13 & 14 Charles 2d.

such children having been in the service of the then government (*u*).

In the 11th and 12th years of the reign of William the 3d, a difficulty arose as to the rights of divers persons, born within the king's dominions, who were disabled to inherit and make their titles by descent from their ancestors, by reason that their father or mother, or some other ancestor, from whom they were to derive their descent, was an alien, and not born within the king's dominions; and for remedying the same an Act was passed in the same years (*see* the stat. 11 & 12 Will. 3, c. 6), whereby it was declared, that all and every person or persons, being the king's natural-born subject or subjects, within any of the king's realms and dominions, should and might thereby lawfully inherit and be inheritable as heir or heirs to any honours, manors, lands, tenements, or hereditaments, and make their pedigrees and titles by descent from any of their ancestors, lineal or collateral, although the father and mother, or fathers or mothers, or any other ancestor, of such person or persons, by, from, through, or under whom he, she, or they should or might make or derive their title or pedigree, were, or was, or should be born out of the king's allegiance, and out of his majesty's realms and dominions, as freely, fully, and effectually, to all intents and purposes, as if such father or mother, or fathers or mothers, or other ancestor or ancestors, by, from, through, or under whom he, she, or they

(*u*) It appears that children of the English ambassadors born abroad, the wives being English women, have always been considered natural-born subjects. *See Calvin's Case*, 7 Reports, 18.

should or might make or derive their title or pedigree, had been naturalized or natural-born subjects, or subjects, within the king's dominions; any law or custom to the contrary notwithstanding.

On providing for the succession of the Crown in the Protestant line, in the 12th and 13th years of the reign of King William the 3d, by which the Crown was limited, after the death of King William the 3d, without issue, to the then Princess Anne of Denmark and her issue, and in default of such issue to the Princess Sophia, then Electress of Hanover, who was the daughter of Princess Elizabeth, then late Queen of Bohemia, and who was the daughter of James the 1st, provision was made with respect to the proper persons to execute offices of trust, so far as the same extended to the possibility that the same might be given to aliens; and by the 3d section of the stat. 12 & 13 Will. 3, c. 2, it was (amongst other things) declared, that after the limitation to the Princess Sophia, then Electress of Hanover, and the heirs of her body, being Protestants, after the death of William the 3d, and the Princess Anne of Denmark, afterwards Queen Anne, and in default of issue of their said respective bodies, should take effect, no person born out of the kingdoms of England, Scotland, or Ireland, or the dominions thereunto belonging (although he were naturalized or made a denizen, except such as were born of English parents), should be capable to be of the Privy Council, or a Member of either House of Parliament, or to enjoy any office or place of trust, either civil or military, or to have any grant of lands, tenements, or hereditaments, from the

Crown, to himself, or to any other or others in trust for him.

The Princess Sophia, then Electress of Hanover, and the issue of her body, being in the reign of Queen Anne, and according to the statute of the 12 & 13 Will. 3, c. 2, entitled to the throne of this realm after the death of Queen Anne, and it being necessary that, being aliens, they should be naturalized, a public Act of Parliament was passed in the 4th & 5th years of the reign of Queen Anne for that purpose, declaring that the Princess Sophia, and the issue of her body, and all persons lineally descending from her then born, or thereafter to be born, were and should be, to all intents and purposes whatsoever, deemed, taken, and esteemed natural-born subjects of this kingdom, as if the said Princess, and the issue of her body, and all persons lineally descending from her, born, or thereafter to be born, had been born within this realm of England, any law, statute, matter, or thing whatsoever to the contrary notwithstanding; but with a provision that every person and persons who should be naturalized by virtue of that Act of Parliament, and should become a Papist, or profess the Popish religion, should not enjoy any benefit or advantage of a natural-born subject of England; but every such person should be adjudged and taken as an alien, born out of the allegiance of the Queen of England, to all intents and purposes whatsoever, anything therein contained to the contrary notwithstanding. It should be observed, however, that, considering the provisions of the 2d stat. of the 7th year of the reign of King James

the 1st, which required that all persons who sought to be naturalized should, before any Bill was brought into Parliament for that purpose, receive the sacrament of the Lord's Supper, and, before any such Bill was twice read, take the oaths of allegiance and supremacy in the Parliament House; a Bill was, in consequence of the Princess Sophia being at the time of her naturalization absent from this kingdom, obliged to be brought in, and was accordingly brought in and passed previous to the Act of Naturalization, for dispensing with the provisions of the statute of James on this occasion (*x*).

In the 7th year of the reign of Queen Anne there seems to have been some desire for a general Naturalization Act, which should enable foreign Protestants to have the advantages of natural-born subjects of this country; and accordingly by 7 Anne, c. 5, after reciting that the increase of people was a means of advancing the wealth and strength of a nation, and that many strangers of the Protestant or reformed religion, out of a due consideration of the happy constitution of the government of this realm, would be

(*x*) The same course was adopted, amongst other instances, in the seventh year of the reign of King George the 2d, for naturalizing the then Prince of Orange, who married the eldest daughter of George the 2d; in the ninth year of the same reign, in the case of the wife of the Prince of Wales, the eldest son of George the 2d; in the fourth year of the reign of George the 3d, in the case of the then Hereditary Prince of Brunswick-Lunenburg, who married the Princess Augusta, eldest sister of George the 3d; and in the case of the Prince Albert, consort of Her present Majesty. For these several statutes, *see* 7 Geo. 2, c. 3; 9 Geo. 3, c. 24; 4 Geo. 3, c. 1; and 3 Vict. c. 1.

induced to transport themselves and their estates into this kingdom, if they might be made partakers of the advantages and privileges which the natural-born subjects thereof did enjoy; it was enacted, amongst other things, that all persons taking the oaths and making and subscribing the declaration appointed by the 6 Anne, c. 23 (being the Act passed in that year with respect to persons to be allowed in Parliament from Scotland, and with respect to trial of Peers for offences committed in Scotland, and for the regulation of voters for Members to serve in Parliament), should be deemed natural-born subjects, and that no person was to have the benefit of that Act unless he had received the Sacrament. And it was further enacted, that the children of all natural-born subjects, born out of the allegiance of her majesty, her heirs and successors, should be deemed, adjudged, and taken to be natural-born subjects of this kingdom, to all intents, construction, and purposes whatsoever; and the Act was made to extend to Ireland(*y*). But in the 10th year of the same reign, the provisions of the last-mentioned statute were, so far as it extended to a general naturalization, found detrimental to the trade and wealth of this

(*y*) There is no reference in this Act to the stat. 25 Edw. 3, c. 2. It appears that before the Act of 7 Anne, c. 5, was passed, it was doubtful whether a special Act of Parliament was not necessary for the issue of an Englishman born beyond sea; and it also appears that, if before this Act, an Englishman had issue born beyond sea, and issue born in this kingdom, and the issue born beyond sea was only made denizen, the issue born in this kingdom would have inherited in preference to the one made denizen. *See* Co. Litt. 129 a, and note 2 to same passage.

country, and mischiefs and inconveniences arose thereby; and accordingly the same statute, except so far as it related to the children of all natural-born subjects born out of the allegiance of her majesty, her heirs and successors, and who were by that Act to be deemed, adjudged, and taken to be natural-born subjects of this kingdom, was repealed by the 5th chapter of the 10th year of the reign of Queen Anne. But such repeal was not to prejudice or impeach the naturalization of persons who had been or should be naturalized at any time before the 4th of February 1711, pursuant to the provisions of the 5th statute of the 7th year of the reign of Queen Anne.

On the accession of King George the 1st, the provisions of the 2d statute of the 12th & 13th years of the reign of William the 3d were explained, so far as related to persons to be employed in offices of trust; and, in accordance therewith, by the statute 1 Geo. 1, c. 4, it was declared that it was not the intent and meaning of the Act of the 12th and 13th years of the reign of William the 3d, that the clause referring to persons to be employed in offices of trust, or anything therein contained, should extend, nor should the said clause be construed, adjudged, or taken to extend, to disable or incapacitate any person who, at or before his majesty's accession to the Crown, was naturalized, to be of the Privy Council, or a Member of either House of Parliament, or take or enjoy any office or place of trust, either civil or military, or to take or have any grant of lands, tenements, or hereditaments, from the Crown to himself, or any other in trust for him. And for the better preserving the said last-men-

tioned clause entire and inviolable, it was further enacted, that no person should thereafter be naturalized, unless in the Bill exhibited for that purpose there should be a clause or particular words inserted therein, to declare that such person should not thereby be enabled to be of the Privy Council, or a Member of either House of Parliament, or to take any office or place of trust, either civil or military, or to have any grant of lands, tenements, or hereditaments from the Crown, to himself or any other person in trust for him; and that no Bill of naturalization should thereafter be received in either House of Parliament, unless such clause or words was first inserted or contained therein.

In the same year an Act was passed for allowing a time for 213 families of Protestant Palatines, then settled in Ireland, to take the oaths, in order to entitle them to all the benefits intended them by the 5th chapter of the 7th year of the reign of Queen Anne, for naturalizing foreign Protestants. But this Act was merely a temporary Act.

As foreign artificers were, in former times, prohibited from settling in this country to the detriment and injury of artificers of this country, so it has been found necessary, for the encouragement of trade, to interfere by legislative enactment to prevent English artificers from leaving their own country and promoting by their industry the wealth of foreign states; and, accordingly, such an event having occurred to a great extent in the reign of King George the 1st, an Act of Parliament was passed in the 5th year of the same reign (being the 27th statute of the same year), whereby, in the event of any of the subjects of this country, being

a manufacturer or artificer, going at any time after the 1st of May 1719 into any country out of his majesty's dominions, there to use or exercise, or to teach any of the said trades or manufactures to foreigners, or in case any of his then majesty's subjects then being, or who thereafter should be, in any such foreign country out of his majesty's dominions as aforesaid, and there using or exercising any of the said trades or manufactures thereinbefore mentioned, should not return into this realm within six months then next after warning given to him by the ambassador, envoy, resident, minister, or consul of the Crown of Great Britain, in the country in which such artificer should be, or by any person authorised by such ambassador, envoy, resident, minister, or consul, or by one of his majesty's secretaries of state for the time being, and from thenceforth continually inhabiting and dwelling within this realm; it was declared that every such person or persons should be from thenceforth incapable of taking any legacy that should be devised to him within this kingdom, or of being an executor or administrator to any person or persons within this kingdom, and should be incapable of taking any lands, tenements, or hereditaments within this kingdom by descent, devise, or purchase, and also forfeit all his lands, tenements, hereditaments, goods, and chattels within this kingdom to his majesty's use, and should from thenceforth be and be deemed and taken to be an alien, and should be out of his majesty's protection.

In the 3d year of the reign of King George the 2d, an Act, which was only to continue for two years, was passed, prohibiting any subject of this country,

or any person residing therein, from advancing or lending any sum or sums of money to any foreign princes, state, or potentate, without a licence obtained from the king under his privy seal, or some proper party; but the Act did not extend to negotiating in foreign funds.

Some doubts having been entertained in the 4th year of the reign of King George the 2d, as to the effect of the statutes 7 Anne, c. 5, and 10 Anne, c. 5, as far as the same related to the children of the natural-born subjects of the Crown of England or of Great Britain, an Act was passed (being the 21st statute of the 4th year of the reign of King George the 2d), and which was intituled, An Act to explain a clause in an Act made in the 7th year of the reign of her then late majesty Queen Anne, for naturalizing foreign Protestants, which related to the children of the natural-born subjects of the Crown of England or of Great Britain; whereby it was declared, that all children born out of the ligeance of the Crown of England or of Great Britain, or which should be born thereafter out of such ligeance, whose fathers were or should be natural-born subjects of the Crown of England or of Great Britain, at the time of the birth of such children respectively, should and might, by virtue of the then recited clause in the said Act of the 7th year of the reign of her then late majesty, and of the then present Act, be adjudged and taken to be, and all such children were thereby declared to be natural-born subjects of the Crown of Great Britain, to all intents, constructions, and purposes whatsoever; but it was declared, that the 5th Act of the 7th year of the reign of Queen Anne did not and should not extend, or ought to be construed,

adjudged, or taken to extend, to make any children born or to be born out of the ligeance of the Crown of England, and of the Crown of Great Britain, to be natural-born subjects of the Crown of England or of Great Britain, whose fathers, at the time of the birth of such children respectively, were or should be attainted of high treason, by judgment, outlawry, or otherwise, either in this kingdom or in Ireland, or whose fathers, at the time of the birth of such children respectively, by any law or laws made in this kingdom or in Ireland, were or should be liable to the penalties of high treason or felony, in case of their returning into this kingdom or into Ireland without the licence of his majesty, his heirs, or successors, or of any of his majesty's royal predecessors, or whose fathers, at the time of the birth of such children respectively, were or should be in the actual service of any foreign prince or state then in enmity with the Crown of England or of Great Britain; but that all such children were, and should be and remain in the same state, plight, and condition, to all intents, constructions, and purposes whatsoever, as they would have been in if the said Act of the 7th year of her then late majesty's reign, or the then present Act, had never been made, anything therein, or in the said Act of the 7th year of her then late majesty's reign, contained to the contrary in anywise notwithstanding; but with a provision in favour of any child, whose father, at the time of the birth of such child, was attainted of high treason as aforesaid, or was liable to the penalties of high treason or felony, in case of returning into this kingdom or Ireland without licence as aforesaid, or was in the actual service of any

foreign prince or state then in enmity with the Crown of England or of Great Britain (other than and excepting always out of that proviso all children of such persons who went out of Ireland in pursuance of the Articles of Limerick), who had come into Great Britain or Ireland, or any other of the dominions belonging to the Crown of Great Britain, and had continued to reside within Great Britain or Ireland, or other the dominions aforesaid, for the space of two years, at any time between the 16th day of November 1708 and the 25th day of March 1731, and during such residence had professed the Protestant religion; or of any child, whose father at the time of his or her birth, was within any of the descriptions before mentioned, who had come into Great Britain or Ireland, or any other of the dominions belonging to the Crown of Great Britain, and professed the Protestant religion, and died within Great Britain or Ireland, or any other of the dominions aforesaid, at any time between the said 16th day of November 1708 and the said 25th day of March 1731; or of any child, whose father at the time of his or her birth was within any of the descriptions before mentioned, who had been and continued in the actual possession or receipt of the rents and profits of any lands, tenements, or hereditaments, in Great Britain or Ireland, for the space of one whole year, at any time between the said 16th day of November 1708 and the said 25th day of March 1731; or had *bonâ fide*, and for good and valuable consideration, sold, conveyed, or settled any lands, tenements, or hereditaments, in Great Britain or Ireland, or any person claiming title thereto, under such sale, conveyance, or settlement, had been and continued in the

actual possession and receipt of the rents and profits thereof for the space of six months, between the said 16th day of November 1708 and the 25th day of March 1731 (*z*).

In the 13th year of the reign of King George the 2d, an Act was passed for naturalizing foreign Protestants or other persons therein mentioned, who were settled, and should settle in any of the colonies in America belonging to the English (being the 13 Geo. 2, c. 7); whereby all persons born out of the ligeance of his majesty, his heirs and successors, who had inhabited or resided, or should inhabit or reside, for the space of seven years or more, in any of his majesty's colonies in America, and should not have been absent out of some of the said colonies for a longer space than two months, at any one time, during the seven years, and should take and subscribe the declaration appointed by an Act made in the 1st year of the reign of his then late majesty King George the 1st, c. 13 (being an Act for the further security of his majesty's person and government, and the succession of the Crown in the heirs of the then late Princess Sophia, being Protestants, and for extinguishing the hopes of the pretended Prince of Wales, his open and secret abettors); or, being of the people called Quakers, should make and subscribe the declaration of fidelity, and take and affirm the effect of the abjuration oath, appointed and prescribed by an Act made in the 8th year of the reign of his then late majesty, c. 13, inti-

(*z*) As to the statute 4 Geo. 2, c. 21, *see* the latter part of the Appendix.

tuled, " An Act for granting the people called Quakers such forms of affirmation or declaration as may remove the difficulties which many of them lie under;" and also make and subscribe the profession of his Christian belief, appointed and prescribed by an Act made in the 1st year of the reign of their then late majesties, King William and Queen Mary, intituled, " An Act for exempting their majesties' Protestant subjects from the penalties of certain laws," before the chief judge or other judge of the colony wherein such persons respectively had so inhabited or resided, or should so inhabit or reside, should be deemed adjudged or taken to be his majesty's natural-born subjects of this kingdom, to all intents, constructions, and purposes, as if they and every of them had been or were born within this kingdom; which said oath or affirmation and subscription of the said declarations respectively the chief judge or other judge of every of the said respective colonies was thereby enabled and empowered to administer and take; and the taking and subscribing of every such oath or affirmation, and the making, repeating, and subscribing of every such declaration, should be before such chief judge or other judge, in open court, between the hours of nine and twelve in the forenoon, and should be entered in the same court, and also in the secretary's office of the colony wherein such person should so inhabit and reside; and every chief judge or other judge of every respective colony, before whom such oaths or affirmation should be taken, and every such declaration should be made, repeated, and subscribed as aforesaid, was thereby required to make a due and proper entry thereof in a book to be kept for

that purpose in the said court; for the doing whereof 2*s.*, and no more, should be paid at each respective place, under the penalty and forfeiture of 10*l.* of lawful money of Great Britain for every neglect or omission: and in like manner every secretary of the colony wherein any person should take the said oaths or affirmation, and make, repeat, and subscribe the said declarations respectively as aforesaid, was thereby required to make a due and proper entry thereof in a book to be kept for that purpose in his office, upon notification thereof to him by the chief judge or other judge of the same colony, under the like penalty and forfeiture for every such neglect or omission; with a proviso that no person of what quality, condition, or place soever, other than and except such of the people called Quakers as should qualify themselves and be naturalized by the ways and means thereinbefore mentioned, or such who professed the Jewish religion, should be naturalized by virtue of that Act, unless such person should have received the Sacrament of the Lord's Supper in some Protestant and Reformed congregation, within this kingdom of Great Britain, or within some of the said colonies in America, within three months then next before his taking and subscribing the said oaths, and making repeating, and subscribing the said declaration; and should, at the time of his taking and subscribing the said oaths, and making, repeating, and subscribing the said declaration, produce a certificate, signed by the person administering the said sacrament, and attested by two credible witnesses, whereof an entry should be made in the secretary's office of the colony wherein such person should so inhabit and reside, as also in the

court where the said oaths should be so taken as aforesaid, without any fee or reward; with certain exceptions in the usual frame of oath in favour of Jews, the Jews being entitled to leave out of the abjuration oath the words "upon the true faith of a Christian." And a certificate under the seal of any of the said colonies, of any persons having resided and inhabited for the space of seven years or more as aforesaid within the said colonies, or some of them, to be specified in such certificate, together with the particular time of residence in each of such respective colonies (whereof the colony under the seal of which such certificate should be given should be one), and of his having taken and subscribed the said oaths, and of his having made, repeated, and subscribed the said declaration; and in case of a Quaker, of his having made and subscribed the declaration of fidelity, and of his having taken and affirmed the effect of the abjuration oath as aforesaid; and in case of a person professing the Jewish religion, of his having taken the oath of abjuration as aforesaid, within the same colony under the seal whereof such certificate should be given as aforesaid, should be deemed and taken to be a sufficient testimony and proof thereof, and of his being a natural-born subject of Great Britain to all intents and purposes whatsoever, and as such, should be allowed in every court within the kingdoms of Great Britain and Ireland, and also in the said colonies in America. And the secretary of every colony was, under the penalty of £. 50, to send lists yearly to the office of the Commissioners of Trade and Plantations, kept in London or Westminster; all which said lists so transmitted and sent over, should, from year to

year, be duly and regularly entered by the said Commissioners in a book or books, to be had and kept for that purpose, in the said office for public view and inspection; but with a proviso that no person who should become a natural-born subject of this kingdom by virtue of that Act should be of the Privy Council, or a Member of either House of Parliament, or capable of taking, having, or enjoying any office or place of trust within the kingdom of Great Britain or Ireland, either civil or military, or of having, accepting, or taking any grant from the Crown to himself, or to any other in trust for him, of any lands, tenements, or hereditaments, within the kingdoms of Great Britain or Ireland, anything thereinbefore contained to the contrary thereof in anywise notwithstanding. This statute was extended to foreigners who had conscientious scruples against taking an oath, in the 20th year of the same reign, by the statute 20 Geo. 2, c. 44—which last-mentioned Act recited the statute 13 Geo. 2, c. 7, and recited that many of the people of the congregation called the Moravian Brethren, and other foreign Protestants, not Quakers, who conscientiously scrupled the taking of an oath, were settled in his then majesty's colonies in America, and demeaned themselves there as a sober, quiet, and industrious people, and many others of the like persuasion were desirous to transport themselves thither; and if the benefit of the said Act, made in the 13th year of his then majesty's reign, were extended to them, they who were then there would thereby be encouraged to continue their residence in his majesty's colonies, and others would resort thither in greater numbers, whereby the said colonies would be

improved, their strength increased, and their trade extended. And the said Act, 20 Geo. 2, c. 44, enacted, that from and after the 25th day of December 1747, all foreign Protestants, who conscientiously scrupled the taking of an oath, and who were born out of the ligeance of his majesty, his heirs or successors, who had inhabited and resided or should inhabit and reside, for the space of seven years or more, in any of his majesty's colonies in America, and should not have been absent out of some of the said colonies for a longer space than two months at any one time during the said seven years, and should make and subscribe the declaration of fidelity, and take and affirm the effect of the abjuration oath, appointed and prescribed by the 13th Act of the 8th year of the reign of his then late majesty King George the 1st, and also make and subscribe the profession of his Christian belief appointed and prescribed by the said recited Act, made by the 18th Act of the 1st year of the reign of their then late majesties, King William and Queen Mary, before the chief judge or other judge of the colony wherein such persons respectively had so inhabited and resided, or should so inhabit or reside, should be deemed, adjudged, and taken to be his majesty's natural-born subjects of this kingdom, to all intents, constructions and purposes, as if they and every of them had been or were born within this kingdom; which said affirmation and subscription of the said declaration, the said chief or other judge of every of the said respective colonies, was thereby enabled and empowered to administer and take; and the taking of every such affirmation, and the making and sub-

scribing of every such declaration, should be in such manner and place, and at such times and hours, and such entries made thereof, and for the same fees, and under the same penalties as in the said recited Act of the 13th year of his majesty's reign were mentioned; and lists of the persons who should take the benefit of that Act, should be transmitted to the Commissioners of Trade and Plantations, in like manner and under the same penalties as lists of the persons taking the benefit of the said Act were thereby directed to be transmitted. Provided always, and it was enacted, that no person should be naturalized by virtue of that Act, unless such person should have received the sacrament of the Lord's Supper in some Protestant or Reformed congregation, within some of the said colonies in America, within three months next before his taking such affirmation, and making and subscribing such declaration, and should, at the time of his taking such affirmation and making and subscribing such declaration, produce a certificate, signed by the person administering the said sacrament, and attested by two credible witnesses, whereof an entry should be made in the secretary's office of the colony wherein such person should so inhabit and reside, as also in the court where the said affirmation should be so taken as aforesaid, without any fee or reward. And it was further enacted, that the provisions contained in the said Act, made in the 13th year of his then majesty's reign, with regard to certificates of residence, and of having made and subscribed the said declaration, and taking the said affirmation, and as to such certificates being made evidence in the courts of Great Britain and Ireland, and also in

the said colonies, and all other the benefits of the said Act, should extend to foreign Protestants, who conscientiously scrupled the taking of an oath, and who should be qualified as aforesaid. Provided always, that the said foreign Protestants should enjoy the privileges of natural-born subjects, and all the benefits of that Act and the said Act of the 13th year of his majesty's reign. Provided always, and it was thereby further enacted, that no person who should become a natural-born subject of this kingdom, by virtue of that Act, should be of the Privy Council or a Member of either House of Parliament, or capable of taking, having, or enjoying any office or place of trust within the kingdoms of Great Britain or Ireland, either civil or military, or of having, accepting, or taking any grant from the Crown to himself, or to any other in trust for him, of any lands, tenements, or hereditaments, within the kingdoms of Great Britain or Ireland; anything thereinbefore contained to the contrary thereof in anywise notwithstanding. Provided also, and it was thereby further enacted by the authority aforesaid, that nothing in the said Act, or in the said recited Act of the 13th year of his majesty's reign contained, should extend or be construed to extend to naturalize any person or persons whatsoever, who by virtue of the 21st statute of the 4th year of King George the 2d were declared and enacted not to be entitled to the benefit of the said Act of the 7th year of her said late majesty's reign, but that all such persons should be and remain in the same state, plight, and condition, to all intents, constructions, and purposes whatsoever, as they would have been in if the said recited Act of the 13th year of his majesty's

reign or that Act had never been made; anything in that Act or in the said recited Act of the 13th year of his majesty's reign contained to the contrary in anywise notwithstanding. See also the stat. 22 Geo. 2, c. 45; 2 Geo. 3, c. 25; and 13 Geo. 3, c. 25.

Although by the statute 23 Geo. 2, c. 13, further provisions were made with respect to the punishment to be awarded against persons guilty of seducing artificers in the manufactures of Great Britain or Ireland out of the dominions of Great Britain, the penalty as to an English artificer of this country going into the service of a foreign country, remained the same as provided by the statute 5 Geo. 1, c. 27 (*a*).

The encouragement of the whale fishery in the reign of King George the 2d, and the probability, that if proper inducements were held out to them, foreigners would be disposed to serve in any ships to be employed by virtue of the Acts for that purpose passed relative to

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(*a*) It is also to be observed, that in the reigns of King George the 2d and 3d, other statutes were passed relative to artificers being seduced to go abroad; *see* stat. 23 Geo. 2, c. 13, (being an Act for the effectual punishing of persons convicted of seducing artificers in the manufactures of Great Britain or Ireland out of the dominions of the Crown of Great Britain; and to prevent the exportation of utensils made use of in the woollen and silk manufactures, from Great Britain or Ireland, into foreign parts; and for the more easy and speedy determination of appeals, allowed in certain cases, by an Act made in the last session of Parliament, relating to persons employed in the several manufactures therein mentioned), ss. 1 & 2; and 22 Geo. 3 and 25 Geo. 3, c. 60 (being an Act to prevent the seducing of artificers or workmen employed in printing calicoes, cottons, muslins or linens, or in making or preparing blocks,

the fishery (*b*), rendered it necessary that the benefits of naturalization should be offered to all such as should be so employed; and accordingly an Act was passed in the 22d year of the reign of King George the 2d, (being the 22 Geo. 2, c. 45,) intituled, "An Act for the further encouragement and enlargement of the whale fishery, and for continuing such laws as were therein mentioned relating thereto; and for the naturalization of such foreign Protestants as should serve, for the time therein mentioned, on board such ships as should be fitted out for the said fishery;" and thereby every person born out of the ligeance of his majesty, his heirs, and successors, being a Protestant, who should serve during the space of three years on board any ship which should be so fitted out as was directed by the said Act of the sixth year of his

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plates or other implements used in that manufactory, to go to parts beyond the seas; and to prohibit the exportation to foreign parts of any such blocks, plates or other implements), ss. 1 & 2. *See* also an Act passed in the Irish Parliament in the 25th year of the reign of King George the 3d, being an Act to prevent the practice of seducing artificers and manufacturers of this kingdom, and of exporting the several tools and utensils made use of in preparing and working up the manufactures thereof, into parts beyond the seas; *see* also the 25th Geo. 3, c. 67, being an Act to prohibit the exportation to foreign parts of tools and utensils made use of in the iron and steel manufactures of this kingdom; and to prevent the seducing of artificers or workmen employed in those manufactures to go into parts beyond the seas; and 39 Geo. 3, c. 56, being an Act to explain and amend the laws relative to colliers in that part of Great Britain called Scotland.

(*b*) *See* the statutes 5 Geo. 2, c. 28; 22 Geo. 2, c. 45, s. 1; 28 Geo. 2, c. 20; and 8 Geo. 3, c. 27.

then majesty's reign thereinbefore mentioned, or by that Act, and which should be employed in such fishery as aforesaid, and which person should take and subscribe the oaths, and make, repeat, and subscribe the declaration appointed by the statute 1 Geo. 1, c. 13, such oaths to be taken and subscribed, and declaration made, in manner therein mentioned, was to be deemed, adjudged, and taken to be his majesty's natural-born subject and subjects of this kingdom, to all intents, constructions, and purposes, as if he and they had been and were born in this kingdom. But no person was to be naturalized by virtue of that Act, unless such person should have received the sacrament of the Lord's Supper in some Protestant or Reformed congregation in his majesty's dominions, within three months next before taking such oaths, and making and subscribing such declaration, and should, at the time of taking such oaths, and making and subscribing such declaration, produce a certificate signed by the person administering the said sacrament, and attested by two credible witnesses, whereof an entry should be made in the court where such oaths should be taken, without any fee or reward; and should also produce a certificate at the time, under the hands of the owner and master of the ship or vessel in which he or they should have so served, of his or their integrity and good behaviour, during the whole time of such service. Provided always, and it was further enacted, that no person who should become a natural-born subject of this kingdom by virtue of that Act, should be of the Privy Council, or a member of either House of Parliament, or capable of taking, having, or enjoying

any office or place within the kingdoms of Great Britain or Ireland, anything thereinbefore contained to the contrary thereof in anywise notwithstanding. Provided always, and it was thereby enacted, that nothing in that Act should extend, or be construed to extend, to naturalize any person or persons whatsoever, who, by virtue of 21st statute of the fourth year of his then majesty's reign, were declared and enacted not to be entitled to the benefit of the said Act of the seventh year of her said late majesty's reign; but that all such persons should be and remain in the same state, plight, and condition, to all intents, constructions, and purposes whatsoever, as they would have been if that Act had never been made, anything in that Act contained to the contrary in anywise notwithstanding. But no person so naturalized by virtue of that Act was to go out of his majesty's dominions in Great Britain or Ireland, or any of his majesty's plantations in America, for more than the space of twelve months at any one time, otherwise they were to lose the benefit of that Act to all intents and purposes whatsoever. And by the 35 Geo. 3, c. 92, aliens, being Protestants, who had been theretofore employed in the Southern whale fishery, and who should take the oath of fidelity and allegiance to his majesty; and, if it was their first voyage from any port of Great Britain, should take an oath that they intended to establish themselves and their families in Great Britain as inhabitants thereof and subjects of his majesty; or, if they had taken a voyage, should, before taking a fresh voyage, take an oath that they had actually established themselves and their families in Great Britain, were allowed to be

employed in the same fisheries. But any person being a Quaker, and so desirous of being employed, might, under that Act, make a declaration of his allegiance and fidelity, and affirmation of his intention to settle in Great Britain. And there was by that Act a given time allowed for a certain number of foreigners who had previously carried on the fishery, and their families, to reside at Milford, and import oil on such conditions as therein mentioned (*c*).

In the 25th year of the same reign, the provisions of the statute 11 & 12 King William 3, c. 6, were explained. And accordingly, by the statute 25 Geo. 2, c. 39, it was enacted, that the 6th statute of the 11th & 12th years of the reign of King William the 3d, should not extend, or be deemed, taken, or construed to extend to give any right or title to any person or persons to inherit as heir or heirs, or co-heir or co-heirs, to any person dying seised of any manors, lands, tenements, or hereditaments, in possession, reversion, or remainder, by enabling any such person to claim or derive his, her, or their pedigree through any alien ancestor or ancestors, unless the person or persons so claiming or deriving his, her, or their title as heir or heirs, co-heir or co-heirs, was or were or should be in being and capable to take the same estate as heir or heirs, co-heir or co-heirs, by virtue of the said statute, at the death of the person

(*c*) The Whale Fishery Acts have all expired. Although aliens were at first prohibited by Act of Parliament from fishing at Newfoundland, that enactment appears to have expired also.

who should last die seised of such manors, lands, tenements, or hereditaments, and to whom he, she, or they should so claim to be heir or heirs, co-heir or co-heirs, by force of the said statute. Provided always, and it was further enacted, that in case the person or persons who should be in being and capable to take at the death of the ancestor so dying seised of any such honours, manors, lands, tenements, or hereditaments, and upon whom the descent should be cast by virtue of that Act, or of the said recited Act, should happen to be a daughter or daughters of an alien, and that the alien father or mother, through whom such descent should be derived by such daughter or daughters, should afterwards have a son born within any of his majesty's realms or dominions, the descent so cast upon such daughter or daughters should be divested in favour of such son; and such son should inherit and take the estate in like manner as was allowed by the common law of this realm in cases of the birth of a nearer heir; or in case such father or mother should have no son or sons, but should have one or more afterwards born within any of his then majesty's realms or dominions, the daughter or daughters so born afterwards should inherit and take in coparcenary with the daughter or daughters upon whom the descent should be cast at the death of the ancestor last seised; anything in that Act contained to the contrary in anywise notwithstanding (*d*).

(*d*) With regard to the Act 25 Geo. 2, c. 39, Sir Wm. Blackstone, as a reason for it, says, that after the statute 11 & 12 Will. 3, c. 6, inconveniences were apprehended in case persons

The Jews obtained some favour with regard to naturalization in the 26th year of the same reign; for in that year an Act was passed (being the statute 26 Geo. 2, c. 26) to permit persons professing the Jewish religion to be naturalized by Parliament, without taking the sacrament; but Jews were thereby disabled from purchasing or inheriting advowsons(*e*); this Act was, however, repealed by the first Act of the following year.

In the 29th year of the reign of King George the 2d, an Act of Parliament was passed enabling his majesty to grant commissions to a certain number of foreign Protestants, who had served abroad as officers or engineers, to act and rank as officers or engineers in America only, under certain restrictions and qualifications.

In the beginning of the reign of King George the 3d an Act of Parliament was passed extending the benefit of naturalization to such foreign Protestants as had served, or should serve for the time therein mentioned, as officers or soldiers in his majesty's Royal American regiment, or as engineers in America; and for that

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should thereby gain a future incapacity to inherit, who did not exist at the death of the person last seised; and he then states a case to show how the interest of a person claiming under the statute of William the 3d might be defeated. *See* Black. Comm. 2d vol. p. 251.

(*e*) This is the statute called by Sir William Blackstone, in his Commentaries, the famous Jew Bill, and as to which he says there were very high debates. *See* 1 Blackstone's Commentaries, p. 375.

purpose an Act was passed in the 2d year of that reign (being the statute 2 Geo. 3, c. 25), whereby it was declared that such foreign Protestants, as well officers as soldiers, who had served, or should thereafter serve, in the Royal American regiment, or as engineers in America, for the space of two years, and should take and subscribe the oaths, and make, repeat, and subscribe the declaration appointed by the 2d statute of the 1st year of the reign of his majesty King George the 1st, and should, at the time of subscribing the said oaths, and making, repeating, and subscribing the said declaration, produce certificates, signed in manner directed by the said Act of the 13th of his then late majesty, of their having received the sacrament in some Protestant and Reformed congregation within the kingdom of Great Britain, or within some of the said colonies in America, within six months before that time, should be deemed, adjudged, and taken to be his majesty's natural-born subjects of this kingdom, to all intents, constructions, and purposes, as if they and every of them had been or were born within this kingdom; and that no estates, of what nature or kind soever, purchased by them or any of them, in any of his majesty's colonies in America, since the passing of the said recited Act of the 29th year of the reign of his then late majesty, should be liable to seizure into the hands of his majesty, his heirs or successors, or their titles thereto be otherwise impeached, by reason of their having been aliens at the time of their making the said purchases, the above recited Acts, or any other statute, law, or thing whatsoever to the contrary not-

withstanding, with a proviso, declaring that nothing in that Act contained should extend, or be construed to extend, to naturalize any person or persons whatsoever, who by virtue of the 21st statute of the 4th year of the reign of King George the 1st, were declared and enacted not to be entitled to the benefit of the said Act of the 7th year of Queen Anne; but that all such persons should be and remain in the same state, plight, and condition, to all intents, constructions, and purposes whatsoever, as they would have been in if that Act had never been made, anything therein contained to the contrary in anywise notwithstanding; and also with a provision, declaring that no person who should become a natural-born subject of this kingdom, by virtue of the Act now in recital, should be thereby enabled to be of the Privy Council, or a Member of either House of Parliament, or be capable of taking, having, or enjoying any office or place of trust within the kingdoms of Great Britain or Ireland, either civil or military, or of having, accepting, or taking any grant from the Crown to himself, or to any other in trust for him, of any lands, tenements, or hereditaments, within the kingdoms aforesaid, anything therein contained to the contrary thereof in anywise notwithstanding.

In order to induce foreigners to lend money on landed property in the West Indies, and to give them proper remedies for recovering the same, an Act of Parliament was passed in the 13th year of the reign of King George the 3d (being the statute 13 Geo. 3, c. 14), intituled, "An Act to encourage the subjects of foreign states to lend money upon the security of freehold or leasehold estates, in any of his then majesty's colonies

in the West Indies; and to render the securities granted to such aliens effectual for recovering payment of the money so to be lent, by sale of such freehold or leasehold estates;" and by that Act, after reciting, amongst other things, that doubts had arisen whether, as the law then stood, any security in the nature of a mortgage granted to a foreigner or alien, or any person in trust for him, could be made effectual against such estates for recovering the money lent thereon, and reciting that no foreigner or alien, as the law then stood, could bring or prosecute any suit for the recovery of money in any court of law or equity within his majesty's dominions, at a time when the state of which such alien was a natural-born subject was at war with this kingdom, it was declared that, from and after the passing of that Act, it should and might be lawful to and for all and every person or persons, being foreigners or aliens, to lend money at a rate of interest not exceeding £.5 per centum per annum, upon the security of any freehold or leasehold estate, in any of his majesty's colonies in the West Indies, and to hold the same as an effectual security for the money lent, and to prosecute any suit or suits for recovering the same, as thereinbefore mentioned, whether the foreign state, of which such alien was a natural-born subject, be at war with this kingdom or not. And in case of non-payment of the money lent upon any such security, at the time therein stipulated and agreed upon, to bring and prosecute by themselves or their lawful attornies respectively, any suit or suits at common law for the recovery of their demands, on any bond or other collateral security, given or entered into, or on any covenant on the part of the

borrower, contained in any such mortgage deed or deeds; and also his, her, or their bill or bills in the Court of Chancery of the colony where the estate on which such security should have been granted lies, praying a decree of sale of the said mortgaged premises, for payment of the debt due thereon; in which said suit or suits the plaintiff or plaintiffs should be entitled to like remedy and remedies, for recovery of his debt and costs due, as any British subject then might or could have; except the being entitled to have or obtain, directly or indirectly, the actual possession of any such mortgaged premises, for any proofs of execution whatsoever at the common law; or to foreclose the equity of redemption of such mortgaged premises by any decree or order of any court of equity whatsoever. And that the said Court of Chancery, where such bill or bills should be brought, might and should direct and order the sale of such mortgaged premises, in the manner as in cases where the mortgagor had consented to a sale of the same, any law, usage, or practice to the contrary thereof in anywise notwithstanding. And reciting that, upon bills brought for the redemption of such mortgages, inconveniences might arise from the want of means to compel such foreigners or aliens, or their representatives, to appear to such bills, who might reside out of the jurisdiction of the court where such bills might be brought; it was enacted, that in all such cases, service of any writ or process of such court upon the known attorney or agent of such foreigners or aliens within the jurisdiction of the said court respectively, should be deemed good service of such writ or process upon any such

foreigner or alien; and in case the defendant or defendants should be absent, and have no such attorney or agent resident within the jurisdiction of the court, upon affidavit thereof made by the person or persons seeking such relief, or by his, her, or their attorney, duly constituted to the satisfaction of the court out of which such writ or process should issue, (in which affidavit should be expressed the place of residence of such foreigner, according to the best of the deponent's information and belief), it should be lawful for such court to issue a commission, under seal to commissioners therein to be named, authorising such commissioners to take affidavit of the service of such writ or process on the defendant or defendants personally, or his, her, or their usual place of residence, and to certify the same; and such affidavit, returned with such commission into the said court, should be competent evidence of the service of such writ or process; any law, custom, or usage to the contrary in anywise notwithstanding. And if the defendant or defendants should not, within six months after service of the said writ or process upon the attorney or agent in the colony, or upon the defendant or defendants abroad, appear to the said bill, either in person or by some attorney or attorneys for that purpose, lawfully to be appointed under hand and seal, or according to the usage of the country in which the defendant belonged; then, in such case, the Court of Chancery in which such suit should be brought was thereby authorised and required to take the bill *pro confesso*, and to order and decree an account to be taken, by one of the masters of the said court, of what was due

to the defendant or defendants for principal and interest, and also for costs, if any; in taking of which account, the complainant or complainants should be obliged to show or produce, before the master, proper vouchers for all credits which he, she, or they should claim: and the said court was thereby further authorised, on the coming in of the said master's report, to make a final decree, appointing a time and place for payment of the sum which, by such report, should appear to be due to the defendant or defendants, together with interest on the said principal sum until tendered as thereinafter mentioned, and adjudging a redemption of the mortgaged premises, upon the payment of the said principal and interest, and costs, if any, either to the defendant or defendants, or to his, her, or their lawful attorney or attorneys, to be constituted as aforesaid, or into the Bank of England, as thereinafter prescribed. And it was further enacted, that after a time and place for redemption of any such mortgage, and the sum of money to be paid for such redemption should be ascertained by the said court, according to the usual course of proceeding in cases of redemption of mortgages, if the sum of money so to be paid should be then and there lawfully tendered, and if such mortgagee or mortgagees, or his or their representative or representatives, attorney or attorneys, should refuse to receive the same, or should not attend for that purpose, then, and in either of such cases, it should be lawful for the mortgagor or mortgagors, or his or their legal representative or representatives, or his, her, or their attorney or attorneys, to pay such sum of money into the Bank of England, in the name and with the privity of

the accountant-general of the High Court of Chancery of England, to be placed to his account there *exparte* the mortgagor or mortgagors, or his or their representative or representatives, pursuant to the method prescribed by the Act of the 12th year of the reign of his then late majesty King George the 1st, intituled, "An Act for better securing the monies and effects of the suitors of the Court of Chancery, and to prevent the counterfeiting of East India bonds and indorsements thereon, as likewise indorsement on South Sea bonds," and the general rules and orders of the said court, and without fee or reward, according to the Act of the 12th year of the reign of his then late majesty King George the 2d, intituled, "An Act to empower the High Court of Chancery to lay out, upon proper securities, any monies, not exceeding a sum therein limited, out of the common and general cash in the Bank of England belonging to the suitors of the said court, for the ease of the said suitors, by applying the interest arising therefrom for answering the charges of the office of the accountant-general of the said court," there to remain for the benefit of the mortgagee or mortgagees, their executors, administrators, or assigns, and to be laid out on government or parliamentary securities, as thereinafter mentioned, until he, she, or they should, upon a petition to be preferred to the High Court of Chancery, in a summary way, at, his, her, or their expense, obtain an order from that court for the payment thereof, and of all interest, profits, and dividends arising therefrom. And it was further enacted, that a certificate or certificates of the accountant-general, under his hand (which he was thereby directed to give without fee or reward,

as well to the mortgagor or mortgagors, his, her, or their heirs, as to the mortgagee or mortgagees, his, her, or their executors, administrators, or assigns, upon application made to him for that purpose), that the mortgagor or mortgagors, or his, her, or their heirs or representatives, attorney or attorneys, had paid such sum into the Bank of England, should be a good and effectual discharge to the mortgagor or mortgagors, or his, her, or their heirs; and that after such certificate should be so given, the mortgagor or mortgagors, his, her, or their heirs or assigns, and all and every other person and persons who should or might be surety or sureties for the payment of the sum originally lent, or the interest thereof, should be and were thereby absolutely acquitted, released, and discharged of and from the same; and that the legal estate, and all other the interest of the mortgagee or mortgagees, or of his, her, or their representative or representatives, in the mortgaged premises, should be, and was thereby declared to be, from and after the granting such certificate or certificates, revested in the mortgagor or mortgagors, or his, her, or their heirs respectively, or in whom he, she, or they should respectively appoint. And it was further enacted, that in the meantime, and until the mortgagee or mortgagees, or his, her, or their legal representative or representatives, should apply by petition to the High Court of Chancery for an order to receive the said sum, the said accountant-general should, and he was thereby directed and empowered to place out the same on government or parliamentary securities; and should pay the interest, dividends, or profits therefrom arising, from time to time, as the same

should become due and payable, unto the person or persons who should be entitled to the sum so paid into the said bank. And it was further enacted, that the said High Court of Chancery should, and was thereby required and authorised, to make an order for the payment of the sum that should be so paid into the said bank as aforesaid, and of all dividends, profits, and interest therefrom arising, to the person or persons entitled thereto, upon an application made to the said court by petition, in a summary way, by the mortgagee or mortgagees, his, her, or their executors, administrators, or assigns; on hearing of which petition it should be sufficient for the petitioner or petitioners to prove, to the satisfaction of the court, that he, she, or they, was or were the person or persons for whose use or benefit the money was so paid into the said bank, or that he, she, or they, were the legal representative or representatives of such person or persons, without requiring any of the proceedings in the Court of Chancery of the colony in the cause to be transmitted hither; and upon producing such order to the accountant-general, the money should be paid to the person specified in such order, or to his, her, or their lawful attorney or attorneys, without fee or reward; and that Act was to be deemed, adjudged, and taken to be a public Act.

In the same 13th year of the reign of King George the 3d, it was considered expedient, on account of divers natural-born subjects of Great Britain, who professed and exercised the Protestant religion, through various lawful causes, especially for the better carrying on of commerce, having been, and being obliged to reside in several trading cities, and other foreign places,

where they had contracted marriages and brought up families, to extend the provisions of the statute of the 4 Geo. 2, c. 21, and accordingly, by the statute 13 Geo. 3, c. 21, which statute was intituled " An Act to extend the provisions of an Act, made in the 4th year of the reign of his late majesty, King George the 2d, intituled an Act to explain a clause in an Act made in the 7th year of the reign of her late majesty, Queen Anne, for naturalizing foreign Protestants, which relates to the children of the natural-born subjects of the Crown of England, or of Great Britain, to the children of such children;" and reciting that no provision had hitherto been made to extend further than to the children born out of the ligeance of his majesty, whose fathers were natural-born subjects of the Crown of England, or of Great Britain: It was enacted, that all persons born, or who thereafter should be born, out of the ligeance of the Crown of England, or of Great Britain, whose fathers were or should be, by virtue of the 21st statute of the 4th year of King George the 2d, entitled to all the rights and privileges of natural-born subjects of the Crown of England, or of Great Britain, should and might be adjudged and taken to be, and were thereby declared and enacted to be natural-born subjects of the Crown of Great Britain, to all intents, constructions, and purposes whatsoever, as if he and they had been and were born in this kingdom; anything contained in the 2d chapter of the 12th and 13th years of the reign of King William the 3d to the contrary in anywise notwithstanding; but with a proviso that nothing in the present Act contained should extend

or be construed, adjudged, or taken to extend to make any person born, or to be born out of the ligeance of the Crown of England, or of the Crown of Great Britain, to be natural-born subjects of the Crown of Great Britain, contrary to all or any of the provisoes, exceptions, limitations, and restrictions, contained in the aforesaid Act, made in the 4th year of the reign of his then late majesty, or to repeal, abridge or alter the same; but all such clauses should be, and remain in the same state, plight, and condition, to all intents, constructions, and purposes whatsoever, as they would have been if the present Act had never been made; and with a proviso also that nothing in the present Act contained should extend, or be construed, adjudged or taken to repeal, abridge or anyways alter the 27th statute of the 5th year of the reign of his then late majesty, King George the 1st, nor to repeal, abridge or anyways alter, any law, statute, custom, or usage whatsoever then in force concerning aliens' duties, customs and impositions, nor to cause any privilege, exemption or abatement relating thereto, in favour of any person naturalized by virtue of that Act, unless such person should come into this realm, and there inhabit and reside, and should take and subscribe the oaths, and make, repeat and subscribe the declaration by the 2d statute of the 1st year of the reign of his then late majesty, King George the 1st, in such manner and form, and at such place and places, as were in and by the said Act directed, and also to receive the sacrament of the Lord's Supper, according to the usage of the Church of England, or in some

Protestant or Reformed congregation within the kingdom of Great Britain, within three months before their taking the oaths in the said Act mentioned; and should, at the time and place of taking and subscribing the said oaths, and of making, repeating and subscribing the said declaration, produce a certificate, signed by the person administering the said sacrament, and attested by two credible witnesses, whereof an entry should be made of record in the court and courts respectively wherein such oaths should have been taken and subscribed, without any fee or reward. And with another proviso, that no person should be enabled thereby to defeat an established right or interest which upon the last day of the session in which this Act was passed should be lawfully vested in any other person; or to claim or demand any estate or interest which should thereafter accrue, unless such claim or demand be made within five years then next after the same should accrue (*f*).

The same year the provisions of the statutes of

(*f*) *See* the Report of the Select Committee of the House of Commons on the Laws affecting Aliens, made the 2d June 1843, in which it is stated that so much doubt arose a few years ago, in a case in which a party, whose grandfather had been born out of the British dominions, wished to establish his rights as a British subject, that out of ten lawyers who were consulted as to his right to inherit, five were of opinion that he could, and the other five that he could not. But *see* in that Report an Irish peerage case of the Earl of Athlone, in which it was held, that a person seeking his rights under his grandfather, who had been born out of the British dominions, was entitled to them. The Report is set out in the Appendix.

the 13 Geo. 2, c. 7, and 2 Geo. 3, c. 25 (both of them relating to the American colonies), were explained as to the offices of trust to be held by persons who had been naturalized under or by virtue of those Acts; and accordingly, by the statute 13 Geo. 3, c. 25, it was declared that all and every person and persons that had become or should become his majesty's natural-born subjects, by force or virtue of the said Acts, or either of them, were and should be deemed to be capable of taking and holding any office or place of trust, either civil or military; and of taking and holding any grant of lands, tenements, and hereditaments from the Crown to himself or themselves, or to any other or others in trust for him or them, as well under the great seal of Great Britain as otherwise (other than and except offices and places, and grant of lands, tenements, and hereditaments within the kingdoms of Great Britain and Ireland), any law or Act of Parliament to the contrary notwithstanding.

In the 14th year of the reign of King George the 3d, it was found that many persons born out of the allegiance of the Crown of Great Britain obtained bills of naturalization, for the purpose of availing themselves in foreign countries of the immunities and indulgences belonging to his majesty's trading subjects, by treaties or otherwise; and in order to apply the said immunities and indulgences to promote the trade of the country to which the persons so naturalized originally belonged, and not with any design of fixing their residence in Great Britain, or of becoming useful subjects thereof; and to remedy such abuses, it was found necessary to

pass an Act of Parliament in order that proper provisions to meet such cases might be inserted in after Acts of Parliament for naturalization; and accordingly, by the statute 14 Geo. 3, c. 84, after reciting that it was neither just nor expedient to permit such abuses of the true intent of naturalization, it was enacted, that no person should thereafter be naturalized unless in the bill exhibited for that purpose there should be a clause or proviso inserted to declare that such person should not thereby obtain or become entitled to claim within any foreign country any of the immunities and indulgences in trade which were or might be enjoyed or claimed therein by natural-born British subjects, by virtue of any treaty or otherwise, unless such person should have inhabited and resided within Great Britain, or the dominions thereunto belonging, for the space of seven years subsequent to the first day of the session of Parliament in which the bill of naturalization should have passed, and should not have been absent out of the same for a longer space than two months at any one time during the said seven years; and that no bill of naturalization should thereafter be received in either House of Parliament, unless such clause or proviso was first inserted or contained therein.

We find that in the reign of King George the 3d, doubts were entertained whether the provisions of the statute 11 & 12 Will. 3, c. 6, extended to Scotland, and it being reasonable that the same rule of succession should take place in both parts of the United Kingdom, and that such doubts should be removed, an Act was passed in

the 16th year of the same reign (being the 52d Act of that year), whereby it was enacted, that all and every person or persons, being the king's natural-born subject or subjects within the United Kingdom, or any other of the king's realms and dominions, should and might thereafter lawfully inherit, and be inheritable, in Scotland, as heir or heirs to any honours, manors, lands, tenements, or hereditaments, and make their pedigrees and titles by descent from any of their ancestors, lineal or collateral, although the father or mother, or fathers or mothers, or other ancestor of such person or persons, by, from, through, or under whom he, she, or they should or might make or derive their title or pedigree, were or was, or should be born out of the king's allegiance, and out of his majesty's realms and dominions, as freely, fully, and effectually, to all intents and purposes, as if such father or mother, or fathers or mothers, or other ancestor or ancestors, by, from, through, or under whom he, she, or they should or might make or derive their title or pedigree, had been naturalized or natural-born subject or subjects within the king's dominions, any law or custom to the contrary notwithstanding; and with a proviso that no person or persons should be thereby enabled to inherit as heir or heirs, or co-heir or co-heirs, to any person dying seised of any manors, lands, tenements, or hereditaments, in possession, reversion, or remainder, through any alien ancestor or ancestors, unless the person or persons so claiming or deriving his or their title as heir or heirs, co-heir or co-heirs, was or were, or should be in being, and capable to take the same estate as heir or heirs, co-heir or co-

heirs, at the death of the person who should so last die seised of such manors, lands, tenements, or hereditaments, and to whom he, she, or they should so claim to be heir or heirs, co-heir or co-heirs; and with a proviso that in case the person or persons who should be in being, and capable to take, at the death of the ancestor so dying seised of any such honours, manors, lands, tenements, or hereditaments, and upon whom the descent should be cast, should happen to be a daughter or daughters of any alien, and that the alien father or mother, through whom such descent should be derived by such daughter or daughters, should afterwards have a son born within any of his majesty's realms and dominions, the descent so cast upon such daughter or daughters should be divested in favour of such son, and such son should inherit and take the estate in like manner as was allowed by the common law in cases of the birth of a nearer heir; or in case such father or mother should have no son or sons, but should have one or more daughter or daughters afterwards born within any of his majesty's realms and dominions, the daughter or daughters so born afterwards should inherit and take in coparcenary with the daughter or daughters upon whom the descent should be cast at the death of the ancestor last seised, anything in that Act contained to the contrary notwithstanding.

Of course after the separation of the United States of America from England, and which United States were, under the statute 22 Geo. 3, c. 46, acknowledged as free, sovereign, and independent states, all the Acts relative to such of the colonies in America as became part

of the United States, have ceased to have effect as to them (*g*).

It being considered expedient that provision should be made for enabling the Bishop of London for the time being, or any other bishop, to be by him appointed, to admit to the order of deacon or priest, persons being subjects or citizens of countries out of his majesty's dominions, without requiring them to take the oath of allegiance, as appointed by law, an Act of Parliament was passed in the 2d session of the 24th year of the reign of King George the 3d (being the 35th Act of the same session), whereby after reciting that by the laws of this realm, every person who should be admitted to holy orders was to take the oath of allegiance in manner thereby provided, and reciting that there were divers persons, subjects or citizens of countries out of his majesty's dominions, inhabiting and residing within the said countries, who professed the public worship of Almighty God according to the liturgy of the Church of England, and were desirous that the Word of God and the sacraments should be continued to be administered unto them according to the said liturgy, by subjects or citizens of the said countries, ordained according to the form of ordination in the Church of England: It was enacted, that from and after the passing of that Act, it should and might be lawful to and for the Bishop of London for the time being,

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(*g*) The treaty of amity between Great Britain and the United States of America was finally carried into effect by the statute 37 Geo. 3, c. 97.

or any other bishop by him to be appointed, to admit to the order of deacon or priest, for the purposes aforesaid, persons being subjects or citizens of countries out of his majesty's dominions, without requiring them to take the oath of allegiance: Provided always, and it was thereby declared, that no person, ordained in the manner thereinbefore provided only, should be thereby enabled to exercise the office of deacon or priest within his majesty's dominions: Provided always, and it was further enacted, that in the letters testimonial of such orders, there should be inserted the name of the person so ordained, with the addition of the country whereof he was a subject or citizen, and the further description of his not having taken the said oath of allegiance, being exempted from the obligation of so doing by virtue of that Act. And under or by virtue of the 84th statute of the 26th year of the reign of King George the 3d, amended by the 6th statute of the 5th year of the reign of Her present Majesty, subjects or citizens of any foreign kingdom or state, whether such foreign citizens be or be not subjects or citizens of the country in which they are to act, may without the Queen's licence for their election, or the royal mandate under the great seal for their confirmation and consecration, and without requiring such of them as may be subjects or citizens of any foreign kingdom or state to take the oaths of allegiance and supremacy, and the oath of due obedience to the archbishop for the time being, be consecrated as bishops in foreign countries by the Archbishop of Canterbury or the Archbishop of York for the time being, together with such other bishops

as they shall call to their assistance. But by the last-mentioned Act, it is provided that no person consecrated to the office of a bishop in the manner therein aforesaid, nor any person deriving his consecration from or under any bishop so consecrated, nor any person admitted to the order of deacon or priest by any bishop or bishops so consecrated, or by the successor or successors of any bishop or bishops so consecrated, shall be thereby enabled to exercise his office within her majesty's dominions in England or Ireland, otherwise than according to the provisions of an Act of the 3d and 4th years of Her present Majesty, intituled, "An Act to make certain provisions and regulations in respect to the exercise within England and Ireland of their office by the bishops and clergy of the Protestant Episcopal Church in Scotland; and also to extend such provisions and regulations to the bishops and clergy of the Protestant Episcopal Church in the United States of America; and also to make further regulations in respect to Bishops and Clergy, other than those of the united Church of England and Ireland."

Previous to the union of Great Britain and Ireland, a statute appears to have been made by the Irish Parliament, in the 14th and 15th years of the reign of King Charles the 2d (being the 13th statute of that year), whereby foreign traders, manufacturers, mariners, &c., being Protestants, who should, within seven years, bring themselves and their stock into Ireland, were naturalized on their taking the proper oaths; which provisions appear to have been continued with some variation, and to be rendered more comprehensive,

extending to all persons, except Jews, subject to certain regulations by the Irish statutes 19 & 20 Geo. 3, c. 29, 23 & 24 Geo. 3, c. 38; and the last-mentioned statute appears to have extended the benefit of the Act to foreigners of all religious persuasions; and the Irish statute, 36 Geo. 3, c. 48, appears to have contained further provisions upon the subject, and to have annulled the exception of Jews, but confined the benefit of the statutes to persons who should previously have obtained a licence from the chief governor in council, which Irish statutes contained similar provisions to those contained in the English statutes, as to the disability of persons to be naturalized to become Members of Parliament or of the Privy Council, or to hold offices of trust (*h*). And by the terms of the Union, all laws in force at the time of the Union, and all the courts of civil and ecclesiastical jurisdiction within the respective kingdoms, were to remain as then by law established within the same, subject only to such alterations and regulations from time to time as circumstances might appear to the Parliament of the United Kingdom to require.

During the wars which existed from 1793 and subsequently to 1815, certain Acts of Parliament were passed for establishing regulations respecting aliens arriving in

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(*h*) *See* Evans' Statutes, vol. 1, p. 4. The Irish statute of 14 & 15 Charles 2, c. 15, appears to have been first continued by an Irish statute, 2 Anne, c. 14, and made perpetual by another Irish statute of 4 Geo. 1, c. 9. And *see* Report on Alien Laws, presented to the House of Commons on the 2d June 1843. The Report is set out in the Appendix.

this country, or resident therein, in certain cases (*i*), the last of which expired on or about the 12th day of May 1816; but which statutes did not extend to any foreign ambassador, or other public minister duly authorised, nor to the domestic servants of any such foreign ambassador, registered as such according to the directions of the laws in force for that purpose, or being actually attendant upon such ambassador or minister, who were not to be deemed as aliens within the meaning of that Act. But such Acts did not affect any alien, in respect of any act done or omitted to be done, who should make it appear that he or she was not above the age of fourteen years at the time when such act was so done or omitted to be done. And such Acts provided, that if any question arose whether any person alleged to be an alien, and subject to the provisions of those Acts or any of them, was an alien or not, or was or was not an alien subject to the said provisions or any of them, the proof that such person was, or by

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(*i*) *See* the statutes 33 Geo. 3, c. 4; 35 Geo. 3, c. 24; 37 Geo. 3, c. 92; 38 Geo. 3, c. 50 & 77; 42 Geo. 3, c. 92; 54 Geo. 3, c. 155; and 55 Geo. 3, c. 54. It is to be observed that by the ninth section of the 50th statute of the 38th year of the reign of King George 3d, it was enacted, that aliens in this country, who had quitted their countries by reason of the revolution and troubles in France, should not be liable to be arrested for any debt or cause of action contracted while such aliens were not within the dominions of his majesty; and in case of any such arrest, the alien should be discharged by his majesty's courts, or by a judge in vacation; but this provision was, of course, only for temporary purposes. As to the construction of this provision, *see* the case of *Sinclair* v. *Charles Philippe, Monsieur de France,* 2 Bos. & Pull. 363.

law was to be deemed to be a natural-born subject of his majesty or denizen of this kingdom, or naturalized by Act of Parliament, or if an alien, was not subject to the provisions in that Act contained, or any of them, by reason of any exception contained in that Act, or which should be expressed in any proclamation or order in council as therein aforesaid, or in any special warrant from one of his majesty's principal secretaries of state, or from the lord lieutenant or other chief governor or governors of Ireland, or his or their chief secretary as aforesaid, should lie on the person so alleged to be an alien, and to be subject to the provisions of that Act, or some or one of them.

Some foreign colonies having been surrendered to this country during the wars, and there being merchants residing in those colonies who would by such surrenders be subjects of this country, but who, by reason of their being aliens, could not, on account of the provisions of the statute of the 12th year of the reign of King Charles the 2d, c. 18, be entitled to exercise the occupation of merchants, it was necessary that some provision should be made to meet such an inconvenience; and, for that purpose, by the statute of the 43d year of the reign of King George the 3d, c. 32, an Act was passed for (amongst other things) allowing aliens, in foreign colonies surrendered to his majesty, to exercise the occupation of merchants and factors during the then war, and until six months after the ratification of a definite treaty of peace (*k*).

(*k*) All persons born in a country which becomes, by conquest, part of the dominions of the Crown of England, become the subjects of this country; but if such a country be afterwards taken

It should be observed that, under or by virtue of several Acts which have been passed in Parliament,

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away from this country by conquest, the persons there born afterwards are aliens. *See* Dyer, 224; Vaughan, 281 & 282. And *see* 1 Bac. Abr. 7th edit. p. 168, citing 1 Wooddes, 382, as to the inhabitants of any island, ceded by our sovereign by treaty, especially if such treaty be ratified by Parliament, being considered as aliens, even although such inhabitants were born under the allegiance of the Crown. In the case of *The Mayor of Lyons* v. *The East India Company*, which is reported in the 1st vol. of Moore's Privy Council Cases, p. 175, a question arose as to whether the English alien laws were applicable to the East Indies; and considerable arguments were used, as to whether such a law, which had not been introduced into the East Indies by any Act of Parliament, or any charter, could be held to prevent a person, who was an alien to the Crown of England, from acquiring a right to freehold property in the East Indies, independent of the right of the Crown to claim it for its own use. And it was held, that the introduction of the English law into a conquered or ceded country, does not draw with it that branch which relates to aliens, if the acts of the power introducing it showed that it was introduced, not in all its branches, but only *sub modo*, and with the exception of that portion. And that the English law incapacitating aliens from holding real property to their own use, and transmitting it by descent or devise, has never been introduced into the East Indies so as to create a forfeiture of lands held in Calcutta or the Mofussil by an alien, and devised by a will, executed according to the Statute of Frauds, for charitable purposes. Lord Brougham, in giving his judgment in that case, said, "At whatever time the sovereignty was acquired, and the power of introducing the alien law became vested in the Crown, the real property in Calcutta must have been held indiscriminately by subjects and foreigners. The sudden application of such a law is in the highest degree improbable, because it would work great inconvenience and grievous injustice. But if the sovereignty was gradually acquired, if the transition of the Company from the state of subjects under the Mogul, to an independent authority, was

and which have been passed for the purpose of encouraging seamen to enter into the service of Great

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slowly made, by imperceptible steps, the introduction of the alien law became still more improbable, for no act could then be done by the party obtaining the dominion, nor any stipulation made by the party becoming subjects, to secure the rights of the one or restrain the power of the other. This may always be done where a conquest or cession at once vests the sovereignty of a district in one state, which had previously belonged to another. The treaty may ascertain, and almost always does ascertain, the relative rights of the parties as to the property of the country. But in the present case no such definition could possibly take place; and this exceedingly increases the improbability of such a law having been introduced at all." And again, as to a foreigner holding a house in the East Indies by lease, or by freehold tenure. "No instance has been produced, indeed it is agreed on all hands that no instance has ever existed, of a forfeiture to the Crown for this cause. There is no such thing known in those parts as an inquisition of office, or any analogous proceeding, or any proceeding whatever for entitling the Crown, or those exercising its delegated authority, to the real estate, or chattels real, of aliens within the district. When those foreigners die, their real estates have descended to their heirs, or been taken by their devisees, or been administered as assets by their executors, without any claim ever having been made by the sovereign power, which would here, in England, have been entitled without any office. Ejectments have been brought, and the parties in possession have never been advised to set up the defence that the lessor of the plaintiff claimed by descent from an alien; and dower has been assigned to widows, alien also." And his Lordship, as to whether the law incapacitating aliens is necessarily applicable wherever the sovereignty of the Crown is established, added, "In several other countries the sovereign has no such right. In France, for example, aliens can hold lands without entitling the Crown, and can transmit them to their heirs; this was abrogated by *Ordonnaux*, 13th October 1814; the *Droit d'aubaine* having been abolished at the Revolution, and the proviso of reciprocity at the Restoration

Britain, all foreigners who have or shall enter into such

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introduced (provided the law of their own country gives the same right to French subjects then seised of lands)." And again, as to whether the general introduction of the English law draws after it that part relating to aliens, after alluding to an opinion of Sir Fletcher Norton, in 1764, the same learned Lord proceeded thus: "The true account of that opinion was given here, though it does not seem to have been accurately understood below. It holds, very distinctly, that the subjects of a conquered or ceded territory are only to be considered as not being aliens by virtue of the treaty which gives them the rights of subjects, and that none but such as can claim the benefit of the treaty, can hold or transmit lands. We say this is the purport of the opinion, and that it was so represented here; for, indeed, the argument maintained by the Crown requires the proposition to be carried thus far, that upon a conquest or a cession, all the inhabitants continue aliens after the change of dominion, unless and until the conqueror or purchaser grants their naturalization. But this position seems wholly untenable; for all the authorities lay it down that upon conquest, the inhabitants, *ante nati* as well as *post nati*, of the conquered country, become denizens of the conquered country; and to maintain that the conquered people became aliens to their new sovereign, upon his accession to the dominion over them, appears extremely absurd, almost as inconsistent with common sense as it would have been to hold the English inhabitants aliens under James 1, at a time when there was even a question raised whether the *ante nati* of Scotland did not become, by his accession, denizens in England. The Court below, it must be observed, distinctly admit that conquest operates what they term a virtual naturalization; but Sir F. Norton holds that, without express provision in a treaty, the subjects conquered are aliens. Even if all the rest of the argument be admitted, still it cannot be denied that the Crown may relinquish its prerogative. Indeed, whenever the inhabitants of conquered provinces are held to obtain the rights of subjects by treaty (and even Sir F. Norton has no doubt of this being possible), those who hold the doctrine the most rigorously, must say that the treaty is a voluntary abandonment of a right of the Crown. It evidences the will of the

service are entitled to, and have the benefit of naturalization in this country (*l*).

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sovereign to exempt the conquered territory from this branch of his prerogative. But the same will of the sovereign may be collected from other circumstances, and the like abandonment of the prerogative be thus evidenced. The charters, regulation, and the Act of Parliament, to which reference has so often been made, appear sufficient circumstances from which to collect this will of the sovereign, and so prove the abandonment in the present case; and this, even upon the supposition that in consequence of the prerogative being generally admitted, the proof lies on those who would set up an exemption—on those who would show that the English law of forfeiture was not introduced into Calcutta—rather than on those who undertake the affirmative proposition." It must be observed, however, that by the statute 55 Geo. 3, c. 84, s. 6, the authorities of the East Indies can prevent any persons, other than persons born subjects, and other persons within the jurisdiction of the charter, from being there.

See also the case cited in Viner's Abridgment, tit. *Alien*, as to a subject begotten at Tournay in France, while that place was under the dominion of the English Crown.

And *see* also Blackstone's Commentaries, vol. 1, p. 108, *et seq.*

It is to be observed that, in questions relating to the rights of aliens in colonies, the Courts of England will be governed by the laws of the particular colonies in which the questions arise, and only look to the law of England for the purpose of determining who are or not aliens. *Donegain* v. *Donegain*, 3 Knapp's Privy Council Cases, 63; and *Re Adams*, 1 Moore's Privy Council Cases, 60. And *see* the case of *Bentinck* v. *Willink*, 2 Hare, 1, as to how far the general law of this country may be applied to questions relating to lands in colonies.

(*l*) *See* particularly the statutes 6 Anne, c. 37; 13 Geo. 2, c. 3; and the statute 20 Geo. 3, c. 20. By these statutes no person naturalized thereby is enabled to be of the Privy Council, or a Member of either House of Parliament, or to take any office or place of trust, either civil or military, or to have any grant of lands from the Crown to himself, or any other person in trust for

In the year 1818 an Act of Parliament was passed, being the 58 Geo. 3, c. 97, entitled an Act to prevent aliens, until the 25th day of March 1819, from becoming naturalized, or being made or becoming denizens, except in certain cases; whereby, after reciting that it was expedient that, for a time to be limited, aliens should not be or become naturalized, or be made or become denizens, except as thereinafter was provided, it was enacted, that from and after the passing of that Act, until the 25th day of March 1819, no alien should become a naturalized subject, or be made or become denizen, or become entitled to the privileges of a naturalized subject or denizen, in any other manner or by any other authority than by any Act which might thereafter be passed by the Parliament of the United Kingdom of Great Britain and Ireland, or by letters of denization thereafter to be granted by his majesty, his heirs and successors, any law, custom, or usage to the contrary notwithstanding: provided always, that nothing therein contained should extend or be construed to extend to affect in any manner such right to naturalization or to denization as any person, in case that Act had not been passed, might acquire, or would have acquired by virtue of any Act

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him; and provision was made, for his majesty, in any future war, to publish a proclamation to permit ships to be manned with foreign mariners in the manner provided by the Act; and upon the publishing such proclamation, the Act, and everything therein contained, should be deemed in full force and virtue during such war. And *see* also the stat. 2 Geo. 3, c. 25; and *see* also Abbott on Shipping, 5th edit. p. 87; and same book, pp. 32 & 505, as to foreigners not being interested in British ships.

or Acts of Parliament made for encouraging seamen to enter into his majesty's service, or for naturalizing such foreign Protestants as should settle in any of his majesty's colonies in America, or for naturalizing such foreign Protestants as should have served or should serve in his majesty's forces, or for the encouragement of the fisheries. And this statute was afterwards continued by several subsequent statutes, the last of which was passed in the 3d year of the reign of King George the 4th; the last statute, however, only continued the first-mentioned statute for a year, so that the same ceased to be of any authority on the 25th day of March 1823 (*m*).

In the latter part of the reign of King George the 3d further Acts were passed for establishing regulations respecting aliens arriving in or becoming resident in this kingdom, in certain cases; and in these Acts similar provisions were contained as in the former Acts for similar purposes, relative to ambassadors and their servants, and persons under 14 years of age, and as to the proper party on whom the proof of alienage should lie (*n*); which statutes were continued by several others made subsequently, the last of which was made in the

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(*m*) *See* the statutes 58 Geo. 3, c. 97; 59 Geo. 3, c. 8; 1 Geo. 4, c. 18; and 3 Geo. 4, c. 15. The object of these statutes was to prevent any alien, under the Scots Act of 1695, for establishing the Bank of Scotland, or under Acts relative to other corporations, from becoming denizens in virtue of such Acts, for a limited period. *See* Hansard's Parliamentary Debates, vol. 38, col. 1307.

(*n*) *See* the statutes 56 Geo. 3, c. 86; 58 Geo. 3, c. 96; 1 Geo. 4, c. 105; 3 Geo. 4, c. 97; and 5 Geo. 4, c. 37.

5th year of the reign of King George the 4th; but in the 7th year of the same reign these Acts of Parliament were superseded by the 7 Geo. 4, c. 54, being another Act for the registration of aliens. The statute 7 Geo. 4, c. 54, has, however, been repealed by another statute made in the 6th and 7th years of the reign of King William the 4th, being 6 & 7 Will. 4, c. 11. By the last-mentioned Act it was enacted, that the master of every vessel which, after the commencement of that Act, should arrive in this realm from foreign parts should immediately on his arrival declare in writing to the chief officer of the customs at the port of arrival whether there is, to the best of his knowledge, any alien on board his vessel, and whether any alien had, to his knowledge, landed therefrom at any place within this realm, and should in his said declaration specify the number of aliens, if any, on board his vessel, or who had, to his knowledge landed therefrom, and their names, rank, occupation, and description, as far as he should be informed thereof; and if the master of any such vessel should refuse or neglect to make such declaration, or should wilfully make a false declaration, he should for every such offence forfeit the sum of 20*l.*, and the further sum of 10*l.* for each alien who should have been on board at the time of the arrival of such vessel, or who should have, to his knowledge, landed therefrom within this realm, whom such master should wilfully have refused or neglected to declare; and in case such master should neglect or refuse forthwith to pay such penalty, it should be lawful for any officer of the customs, and he was thereby required, to detain such

vessel until the same should be paid: provided always, that nothing thereinbefore contained should extend to any mariner actually employed in the navigation of such vessel during the time that such mariner should remain so actually employed. And it was further enacted, that every alien who should after the commencement of that Act arrive in any part of the United Kingdom from foreign parts, should, immediately after such arrival, present and show to the chief officer at the port of debarkation, for his inspection, any passport which might be in his or her possession, and declare in writing to such chief officer, or verbally make to him a declaration, to be by him reduced into writing, of the day and place of his or her landing, and of his or her name, and should also declare to what country he or she belonged and was subject, and the country and place from whence he or she should then have come; which declaration should be made in or reduced into such form as should be approved by one of his majesty's principal secretaries of state; and if any such alien coming into this realm should neglect or refuse to present and show any passport which might be in his or her possession, or if he or she should neglect or refuse to make such declaration, he or she should forfeit the sum of 2 *l.* And it was further enacted, that the officer of the customs to whom such passport should be shown, and declaration made, should immediately register such declaration in a book to be kept by him for that purpose (in which book certificates should be printed in blank, and counterparts thereof, in such form as should be approved by one of his majesty's principal secretaries of state), and should insert therein

the several particulars by that Act required, in proper columns, in both parts thereof, and should deliver one part thereof to the alien who should have made such declaration. And it was further enacted, that the chief officer of the customs in every port should, within two days, transmit a true copy of the declaration of every master of a vessel, and a true copy of every such certificate, if in Great Britain, to one of his majesty's principal secretaries of state; and if such alien should have arrived from any foreign country in Ireland, he should transmit a true copy of such declaration, and of such certificate, to the chief secretary for Ireland. And it was further enacted, that any alien about to depart from this realm should, before his or her embarkation, deliver any certificate which he or she should have received under the provisions of that Act, to the chief officer of the customs at the port of departure, who should insert therein that such alien had departed this realm, and should forthwith transmit the same to one of his majesty's principal secretaries of state, or to the chief secretary for Ireland, as the case might be, in like manner as thereinbefore was directed in respect of the certificate given to an alien on his or her arrival in this realm. And it was further enacted, that if any certificate issued to any alien by virtue of that Act should be lost, mislaid, or destroyed, and such alien should produce to one of his majesty's justices of the peace proof thereof, and should make it appear to the satisfaction of such justice that he or she had duly conformed with that Act, it should be lawful for such justice, and he was thereby required to testify the same under his hand; and such alien should thereupon be entitled to

receive from one of his majesty's principal secretaries of state, or from the chief secretary for Ireland, as the case might be, a fresh certificate, which should be of the like force and effect as the certificate so lost, mislaid, or destroyed. And it was further enacted, that all certificates thereinbefore required to be given should be given without fee or reward whatsoever; and every person who should take any fee or reward of any alien or other person for any certificate, or any other matter or thing done under that Act, should forfeit for every such offence the sum of 20 *l.*; and every officer of the customs who should refuse or neglect to make such entry as aforesaid, or grant any certificate thereon, in pursuance of the provisions of that Act, or should knowingly make any false entry, or neglect to transmit the copy thereof, or to transmit any declaration of the master of a vessel, or any declaration of departure, in manner directed by that Act, should forfeit for every such offence the sum of 20 *l.* And it was further enacted, that if any person should wilfully make or transmit any false declaration, or should wilfully forge, counterfeit, or alter, or cause to be forged, counterfeited, or altered, or should utter, knowing the same to be forged, counterfeited, or altered, any declaration or certificate thereby directed, or should obtain any such certificate under any other name or description than the true name and description of the alien intended to be named and described, without disclosing to the person granting such certificate the true name and description of such alien, or should falsely pretend to be the person intended to be named and described in any such certificate, every person so offending should,

upon conviction thereof before two justices, either forfeit any sum not exceeding 100*l.*, or be imprisoned for any time not exceeding three calendar months, at the discretion of such justices. And it was further enacted, that all offences against that Act should be prosecuted within six calendar months after the offence committed; and all such offences should be prosecuted before two or more justices of the peace of the place where the offence should be committed, who were required, in default of payment of any pecuniary penalty, to commit the offender to the common gaol for any time not exceeding one calendar month, unless the penalty should be sooner paid, where such penalty should not exceed the sum of 20*l.*, and forthwith to report the same to one of his majesty's secretaries of state, or to the chief secretary for Ireland, as the case might require, the conviction of every offender under this Act, and the punishment to which he was adjudged; and no writ of certiorari, or of advocation, or suspension should be allowed, to remove the proceedings of any justices touching the cases aforesaid, or to supersede or suspend execution or other proceeding thereupon: provided always, and it was further enacted, that nothing in that Act contained should affect any foreign ambassador or public minister duly authorised, nor any domestic servant of any such foreign ambassador or public minister registered as such according to law, or being actually attendant upon such ambassador or minister; nor any alien who should have been continually residing within this realm for three years then next before the passing of that Act, or who should thereafter at any time complete such resi-

dence of three years, and who should have obtained from one of his majesty's principal secretaries of state, or from the chief secretary for Ireland, a certificate thereof; nor any alien, in respect of any act done or omitted to be done, who should be under the age of fourteen years at the time when such act was done or omitted to be done: provided always, that if any question should arise whether any person alleged to be an alien, and to be subject to the provisions of that Act was an alien or not, or was or was not subject to the said provisions or any of them, the proof that such person was, or by law was to be deemed to be, a natural-born subject of his majesty, or a denizen of this kingdom, or a naturalized subject, or that such person, if an alien, was not subject to the provisions of that Act or any of them, by reason of any exception contained in that Act or otherwise, should lie on the person so alleged to be an alien, and to be subject to the provisions of that Act. And it was further enacted, that that Act should commence and take effect from and after the first day of July in that year. And it was further enacted, that that Act might be amended, altered, or repealed by any Act to be passed in that session of Parliament.

Aliens, unless naturalized, or made denizens, or subjects by conquest or cession, or having served in Her Majesty's ships of war, are not authorised to hold British registered shipping. This was declared by the 16th section of the statute 3d & 4th King William 4, c. 54, being an Act intituled "An Act for the encouragement of British Shipping and Navigation." And the same provision was further carried out by the 12th section of the statute 3 & 4 Will. 4, c. 55, being an Act for the registering of British vessels.

It is to be observed, however, that, in the 5th year of the reign of King George the 4th, all the Acts of Parliament hereinbefore mentioned or referred to relative to artificers going abroad, together with every other law, statute or enactment, relative to the same subjects, and whether in force throughout or in any of the United Kingdoms of Great Britain and Ireland, were repealed, save and except in as far as the same may have repealed any prior Act or enactment (*o*).

The laws of this country have also provided a remedy in this country in the case of murder or manslaughter committed on an alien, or by an alien, in any of Her Majesty's dominions abroad. The trials in such cases are carried on here by virtue of the 7th & 8th sections of the statute 9 George 4th, cap. 31, whereby it is provided, that if any of his majesty's subjects shall be charged in England with any murder or manslaughter, or with being accessory before the fact to any murder, or after the fact to any murder or manslaughter, the same being respectively committed on land out of the United Kingdom, whether within the king's dominions or without, it shall be lawful for any justice of the peace of the county or place where the person so charged shall be, to take cognizance of the offence so charged, and to proceed therein as if the same had been committed within the limits of his ordinary jurisdiction; and if any person so charged shall be committed for trial, or admitted to bail to answer such charge, a commission of oyer and terminer under the great seal shall be directed to such persons and into such county or place as shall be appointed by the

(*o*) *See* the statute 5 Geo. 4, c. 97.

Lord Chancellor, or Lord Keeper, or Lords Commissioners of the Great Seal, for the speedy trial of any such offender; and such persons shall have full power to inquire of, hear, and determine all such offences, within the county or place limited to their commission, by such good and lawful men of the said county or place as shall be returned before them for that purpose, in the same manner as if the offences had been actually committed in the said county or place: with a proviso giving to any peers of the realm, or persons entitled to the privilege of peerage, who should be indicted of any such offences, by virtue of any commission to be granted as aforesaid, the benefit of trial by their peers in the manner heretofore used: provided also, that nothing herein contained shall prevent any person from being tried in any place out of this kingdom for any murder or manslaughter committed out of this kingdom, in the same manner as such person might have been tried before the passing of this Act. And that where any person, being feloniously stricken, poisoned, or otherwise hurt upon the sea, or at any place out of England, shall die of such stroke, poisoning, or hurt in England, or being feloniously stricken, poisoned, or otherwise hurt in any place in England, shall die of such stroke, poisoning or hurt upon the sea, or at any place out of England, every offence committed in respect of any such case, whether the same shall amount to the offence of murder or of manslaughter, or of being accessory before the fact to murder, or after the fact to murder or manslaughter, may be dealt with, inquired of, tried, determined, and punished in the county or place in England in which such death, stroke, poisoning, or hurt

shall happen, in the same manner, in all respects, as if such offence had been wholly committed in that county or place (*p*).

With regard, however, to the manner in which the naturalization of aliens is to be obtained, it should be observed, that the statute of 7th James 1st, c. 2, which enacted that the sacrament of the Lord's Supper should be received, and the oath of allegiance and supremacy taken, by all parties who were to be naturalized or restored in blood, was altered and amended, by another statute, being the 6th Geo. 4, c. 67, and by that statute it was enacted, that from and after the passing of that Act, it should not thenceforth be necessary for any person who was to be naturalized or restored in blood, to receive the sacrament of the Lord's Supper, as directed by the said Act. And it was further enacted, that if it should appear to the satisfaction of the House of Parliament, in which a Bill should originate for restoring any person in blood, that the person intended by such Bill to be so restored in blood was unable from sickness or bodily infirmity, or other sufficient cause, to take the oaths of supremacy and of allegiance in the Parliament House, before his or her Bill should be twice read, as directed by the said Act, it should and might be lawful for such House of Parliament to receive in lieu thereof sufficient proof, before any such Bill should be twice read, that the said oaths had been taken within one year before a justice of the

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(*p*) As to the fact whether the jurisdiction given extends to the case where the prisoner and injured party are both aliens, see *postea*, chap. 2, p. 109, note (*s*).

peace or mayor or other chief magistrate in any county or city or town in Great Britain or Ireland, or before one of his majesty's judges or justices in any of his majesty's courts of judicature in the colonies or foreign possessions of his majesty.

As certain foreign countries have afforded protection to the authors of books first published in this country, it has been considered proper to extend a similar protection to authors of books first published in foreign countries. This was carried into effect by a statute in the reign of Her present Majesty, being the statute 1 & 2 Victoria, cap. 59, by which statute, and which is intituled "An Act for securing to authors, in certain cases, the benefit of international copyright," it was enacted that it should be lawful for Her Majesty, by any Order of Her Majesty in Council, to direct that the authors of books which should, after a future time to be specified in such Order in Council, be published in any foreign country to be specified in such Order in Council, and their executors, administrators, and assigns, should have the sole liberty of printing and reprinting such books within the United Kingdom of Great Britain and Ireland, and every other part of the British dominions for such term as Her Majesty should by such Order in Council direct, not exceeding the term which authors being British subjects were then by law entitled to in respect of books first published within the United Kingdom; provided that no such author or his assigns should be entitled to the benefit of the Act unless, within a time to be in that behalf prescribed by such Order in Council, the title to the copy of every such

book, and the name and place of abode of the author thereof, and the time and place of the first publication thereof in such foreign country, should be entered in the register-book of the Company of Stationers, in London; and unless, within a time to be also prescribed by such Order in Council, one printed copy of the whole of such book, and of every volume thereof, upon the best paper upon which the largest number or impression of such book should have been printed for sale, together with all maps and prints relating thereto, should be delivered to the warehouse-keeper of the Company of Stationers, at the hall of the said company. Provided always, and it was enacted, that if a book be published anonymously, it should be sufficient to insert in the entry thereof in such register-book the name and place of abode of the first publisher thereof, instead of the name and place of abode of the author thereof, together with a declaration that such entry was made either on behalf of the author, or on behalf of such first publisher, as the case might require. And it was enacted, that every such entry should be *primâ facie* proof of a rightful first publication; but if there be a wrongful first publication, and any party had availed himself thereof to obtain an entry of a spurious work, the author or his first publisher might apply by petition or on motion to the Court of Chancery to order such entry to be amended; but no such order should be made unless it be proved to the satisfaction of the said court, first, with respect to a wrongful publication in a country to which the author or first publisher did not belong, and in regard to which there did not subsist with this country any treaty of inter-

national copyright, that the party making the application was the author or first publisher, as the case required; second, with respect to a wrongful first publication, either in the country where a rightful first publication had taken place, or in regard to which there subsisted with this country a treaty of international copyright, that a court of competent jurisdiction in any such country where such wrongful first publication had taken place had given judgment in favour of the right of the party claiming to be the author or first publisher. And it was enacted, that such register-book should at all times be kept at the hall of the said company, and for every such entry the sum of 2 *s.* and no more should be paid, and the same register-book might at all seasonable and convenient times be inspected by any person on payment of the sum of 1 *s.* and no more to the warehouse-keeper of the said Company of Stationers; and such warehouse-keeper should, when and as often as thereto required, give a certificate under his hand of every or any such entry and delivery, and of the time of making the same respectively, and for every such certificate the sum of 1 *s.* should be paid; and such certificate, upon proof of the handwriting of the person signing the same, and that such person was in fact the warehouse-keeper of the said company, should without further proof be admitted in all courts as evidence of such entry and delivery, and of the time of making the same respectively. And it was enacted, that the said warehouse-keeper should receive at the hall of the said company every book or volume so to be delivered as aforesaid, and within one calendar month after receiving

such book or volume, should deposit the same in the library of the British Museum. Provided always, and it was enacted, that it should not be requisite to deliver to the warehouse-keeper of the said Stationers' Company any printed copy of the second or of any subsequent edition of any book or books so delivered as aforesaid, unless the same should contain additions or alterations; and in case any edition after the first of any book so delivered as aforesaid should contain any addition or alteration, it should not be requisite to deliver any printed copies thereof, if one printed copy of such additions or alterations only, printed in an uniform manner with the former edition of such book, be, within a time in that behalf to be prescribed by any such Order in Council as aforesaid, delivered to the warehouse-keeper of the said Company of Stationers. And it was enacted, that the respective terms to be specified by such Orders in Council respectively for the continuance of the privilege to be granted to the authors of books to be first published in foreign countries, and their said respective assigns, might be different for books first published in different foreign countries; and that the times to be prescribed for the entry of the titles to the copies of such books, and the delivery to the said warehouse-keeper of the aforesaid copy, might be different for different foreign countries and for different classes of books. And it was enacted, that if any bookseller or printer or other person whatsoever, in any part of the United Kingdom of Great Britain and Ireland, or in any other part of the British dominions, should, within the term to be limited by any such Order in Council, print, reprint, or import for

sale, or cause to be printed, reprinted, or imported for sale, any book to which such Order in Council should extend, without the consent of the author or other proprietor of the copyright of and in such book first had and obtained in writing, or, knowing the same to be so printed, reprinted, or imported for sale, without such consent of such author or other proprietor, should sell, publish, or expose to sale, or cause to be sold, published, or exposed to sale, or have in his possession for sale, any such book without such consent first had and obtained as aforesaid, then every such offender should be liable to a special action on the case at the suit of the author or other proprietor of the copyright of and in such book so unlawfully printed, reprinted, imported or published or exposed to sale, or being in the possession of such offender for sale as aforesaid, contrary to the true intent and meaning of the Act; and every such author or other proprietor should and might, by and in such special action on the case, to be so brought against such offender in any court of record in that part of the said United Kingdom or of the British dominions in which the offence should be committed, recover such damages as the jury on the trial of such action or on the execution of a writ of inquiry thereon, should give or assess, together with double costs of suit, in which action no privilege or protection should be allowed; and every such offender should also forfeit such book, and every sheet being part of such book, and should upon order of any court of record in which any action at law or suit in equity should be commenced or prosecuted by such author or other proprietor, to be made

on motion or petition to the said court, deliver the same to the author or other proprietor of the copyright of such book, or to his attorney or agent to be thereto lawfully authorised, and he should forthwith damask or make waste paper of the same; and every such offender should also forfeit the sum of 3*d.* for every sheet thereof, either printed or printing, or published, or exposed to sale, contrary to the true intent and meaning of the Act, the one moiety thereof to Her Majesty, and the other moiety thereof to any person who should sue for the same in any such court of record by action of debt, bill, plaint, or information, in which no privilege or protection should be allowed: provided always, that in Scotland such offender should be liable to an action of damages in the Court of Session in Scotland, which should and might be brought and prosecuted in the same manner in which any other action of damages to the like amount might be brought and prosecuted there; and in such action, where damages should be awarded, double costs of suit or expenses of process should be allowed. Provided always, and it was enacted, that no such Order in Council should have any effect, unless it should be therein stated, as the ground for issuing the same, that due protection for the benefit of the authors of printed books first published in the dominions of Her Majesty, and their assigns had been secured by the foreign power in whose dominions the books to which such Order in Council should relate should be first published. And it was enacted, that it should be lawful for Her Majesty, by an Order in Council, from time to time to revoke or alter any Order in Council previously made under the

authority of that Act; but, nevertheless, without prejudice to any rights acquired previously to such revocation or alteration. And it was enacted, that every Order in Council to be made under the authority of the Act should, as soon as might be after the making thereof by Her Majesty in Council, be published in the London Gazette, and from the time of such publication should have the same effect as if every part thereof were included in that Act. And it was enacted, that a copy of every Order of Her Majesty in Council made under that Act should be laid before both Houses of Parliament within six weeks after issuing the same, if Parliament be then sitting, and, if not, then within six weeks after the commencement of the then next session of Parliament. Provided always, and it was enacted, that nothing in that Act contained should be construed to prevent the printing, publication, or sale of any translation of any book, the author whereof and his assigns might be entitled to the benefit of that Act. And it was enacted, that the author of any book to be, after the passing of that Act, first published out of Her Majesty's dominions, or his assigns, should have no copyright therein within Her Majesty's dominions, otherwise than such (if any) as he might become entitled to under that Act. Provided nevertheless, and it was enacted, that all actions, suits, bills, indictments, or informations for any offence that should be committed against that Act, should be brought, sued, and commenced within twelve months next after such offence committed, and not afterwards. And it was enacted, that in the construction of that Act, the word "book"

should be construed to include "volume," "pamphlet," "sheet of letter-press," "sheet of music," "map," "chart," or "plan;" and the words, "printing," and "reprinting," should include engraving, and any other method of multiplying copies; and the expression "Her Majesty," should include the heirs and successors of Her Majesty; and the expressions, "Order of Her Majesty in Council," and "Order in Council," should respectively mean Order of Her Majesty, acting by and with the advice of Her Majesty's most honourable Privy Council; and in describing any persons or things, any word importing the plural number should mean also one person or thing, and any word importing the singular number should include several persons or things, and any word importing the masculine should include also the feminine gender; unless in any of such cases there should be something in the subject or context repugnant to such constructions.

The law as to aliens, and the proper mode of doing away with alienage, either by denization or naturalization, has not since been altered by legislative enactment; and the propriety of preventing even those aliens who have been made denizens or naturalized from being entitled to have offices of trust under Government, or of becoming Members of Parliament or of the Privy Council, seems to have been generally acquiesced in up to the present time; and indeed, the effect of the natural allegiance and the innate feeling which every person must have and bear to the sovereign in whose country and under whose allegiance he was born, would, as it is

presumed, be some answer to any attempt to give such privileges to aliens when made denizens or naturalized, as they would not have the same tie and influence towards this country as British-born subjects; and consequently no general naturalization appears to have been attempted to be passed since the 5th statute of the 7th year of Queen Anne, except perhaps once in the reign of King George the 2d (*q*), until the last session of Parliament (1843), when a Bill for that purpose was introduced by Mr. Hutt, the Member for Gateshead: but the feeling against a general naturalization appears to have prevailed, and the Bill introduced by Mr. Hutt was, on the 9th of March last, negatived without a division, and consequently lost, although from some of the remarks then made some suggestions were made as to lessening the expense of naturalization.

On the 15th of March last, however, a Select Committee of Members of the House of Commons was appointed, on the motion of Mr. Hutt, to inquire into the state of the laws affecting aliens and others resident in this country, not being native-born subjects of the British Crown, with a view to ascertain whether it might be expedient to make any and what alterations thereon, for the purpose of facilitating the admission of foreigners into the rights and privileges of British subjects, excepting the disability to be of the Privy Council or a Member of either House of Parlia-

(*q*) This is represented in the speeches made by Mr. Hutt and Sir James Graham in Parliament on the 9th of March last.

ment, as limited by the Act 12th & 13th William 3d, cap. 2.

The Select Committee accordingly proceeded to the consideration of the matters referred to them, and examined several witnesses, and having considered the evidence laid before them, on the 2d of June last, made their report to the House of Commons, and by their report, after referring to the state of the law and the costs incurred by aliens in obtaining letters patent of denization and acts of naturalization, and after referring to the number of foreigners in England, and the nonconformity of the greater number of them with the provisions of the Registration Act, and as to there being no provisions in the same statute for the recovery of the penalties of disobedience, have recommended that the Secretary of State should be invested with the power to grant all rights which might have been conferred by denization, and that provision should be made by law for the more easy admission of foreigners resident in this country to whatever rights the Legislature may think fit to invest them with, and that such rights should include the capacity to fill certain offices of trust and employments, civil and military, and particularly noticing the office of justice of the peace; and the Committee by their report further recommended the abolition of the statutes 3 & 4 Will. 4, c. 54 & 55, so far as they prevent aliens from being owners of British registered shipping, and that aliens domiciled in this country should be enabled to hold real property here; and after referring to certain doubts, which they state are entertained on some of

the Acts referred to in their report, and to the enactments being scattered, and the law neither clear nor uniform, and its operation harsh and injurious, the Committee were of opinion that it is highly expedient to consolidate the law (*r*).

(*r*) The Report is introduced in the Appendix; and *see* the notes thereon.

CHAPTER II.

AS TO WHO IS AN ALIEN; AND IN WHAT RESPECTS AN ALIEN IS SUBJECT TO THE LAWS OF THIS COUNTRY.

THE word alien is derived from the Latin word "alienus;" and an alien may be defined to be a person born out of the dominions of the Crown of England; that is, out of the allegiance of the Queen; or as Sir Edward Coke, in his Commentary on Littleton, describes him to be, one born in a strange country, under the obedience of a strange prince or country, or out of the ligeance of the king (*a*).

It should, however, be observed that persons, although originally natural-born subjects, may subsequently become aliens (*b*).

In order to the necessary ascertainment of who are aliens, and who not, it may be proper to describe who are natural-born subjects.

A natural-born subject may be described to be a person whose parents at the time of his birth were under the actual obedience of our

(*a*) Co. Litt. 129 a.

(*b*) See *supra*, pp. 10, and 65, note (*k*); and *see* the statutes 14 & 15 Hen. 8, c. 4, and 5 Geo. 1, c. 27; the latter statute has, however, been repealed.

king, and whose place of birth was within his dominions. In *Calvin's Case* (*c*), with reference to natural-born subjects, it is said that " unless in special cases, these three incidents should be observed: 1st, his parents must be under the actual obedience of the king; 2dly, the place of his birth must be within the king's dominions; and, 3dly, the time of his birth must be considered;— for if he was born under the ligeance of our king, he could not be the subject of another king."

In early times it was a matter of some doubt as to the situation in which persons born upon the English seas stood with respect to this country; but it was held that such persons were not aliens (*d*).

By the 25 Edw. 3, stat. 2, all children inheritors which from thenceforth should be born without the ligeance of the king, whose fathers and mothers (*e*) at the time of their birth were

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(*c*) 7 Rep. 18.

(*d*) Molloy, 370.

(*e*) It has been attempted to read the word "and" in this passage as "or," and references have been made to the cases of *Rex* v. *Eaton*, Litt. Rep. 23. 29; *Bacon* v. *Bacon*, Cro. Car. 601; *Collingwood* v. *Pace*, 1 Ventr. 422; and to several passages in Bacon's Abr. and Viner's Abr. which it was said warranted such a construction of that word; but this was denied in the case of *Doe* dem. *Duroure* v. *Jones*, 4 Term Rep. 300 : and *see* the Judgment of Lord Kenyon in that case as to the words, same case, pages 308 and 309.

and should be at the faith and allegiance of the King of England, shall have and enjoy the same benefits and advantages, to have and bear the inheritance within the same allegiance as the other inheritors therein aforesaid, in time to come; so always that the mothers of the said children do pass the sea by the license and will of their husbands. And although those words appear merely to confer a right of inheritance on such children, still it has been doubted whether the Legislature, in passing that Act, did not intend to confer on them all the rights of natural-born subjects (*f*). But, by virtue of subsequent statutes, since passed (*g*), all children whatsoever, born out of the allegiance of the Crown of England, whose fathers are natural-born subjects of the Crown of England or of Great Britain, at the time of the birth of such children, if such fathers at the time of the birth of such children are not or shall not be attainted of high treason, outlawry, or otherwise, either in this kingdom or in Ireland, or liable to the penalties of high treason or felony, in case of their returning into this kingdom or into Ireland without the license of his Majesty,

(*f*) *See* the Judgment of Lord Kenyon in the case of *Doe* dem. *Duroure*, 4 Term Rep. 308.

(*g*) 7 Anne, c. 5, explained by 4 Geo. 2, c. 25, and 13 Geo. 3, c. 21.

his heirs or successors, or of any of his Majesty's royal predecessors, or at the time of the birth of such children respectively, not in the actual service of any foreign prince or state then in enmity with the Crown of England or of Great Britain, and the children of such children are natural-born subjects (*h*); and such persons as, under the provisions of the several statutes passed with regard to the American colonies now belonging to England, have inhabited or resided, or shall inhabit or reside, in such colonies for such time and under such restrictions and terms in the said Acts mentioned (*i*); and also all aliens entering into the naval service, under the provisions of other Acts of Parliament (*j*), may become entitled to the privileges of natural-born subjects.

It has been held that if baron and feme go beyond sea without license, or tarry there after the time limited by the license, and have issue born there, such issue are aliens and not inhetitable, within the provisions of the 25 Edw. 3, stat. 2 (*k*).

(*h*) *See*, however, the note on the stat. 13 Geo. 3, c. 21, *supra*, chap. 1, p. 55, note (*f*).

(*i*) 13 Geo. 2, c. 7; 20 Geo. 2, c. 44; and *see* the stat. 22 Geo. 2, c. 45; 2 Geo. 3, c. 25; 13 Geo. 3, c. 25.

(*j*) *See* note (*l*), *supra*, p. 69.

(*k*) 1 R. 3, 4.

The king's children are inheritable in England, wheresoever born (*l*).

The children of English ambassadors in foreign countries by a wife who is an English woman, are natural-born subjects (*m*), and also the children of an English merchant travelling abroad (*n*). But the son of an alien father and English mother, born out of the king's allegiance is an alien, and cannot inherit to his mother in this country within the provisions of the stat. 25 Edw. 3, stat. 2 (*o*).

An illegitimate child of a natural-born subject, if such illegitimate child was born abroad, would, as it appears, be an alien, as such child would not be able to claim the country of her parents (*p*).

And if the father of a child born out of the kingdom, was once a natural-born subject, but has lost his character of natural-born subject before the birth of such child, such child is an alien and not a natural-born subject (*q*).

At the same time, it may be observed, that if

(*l*) Cro. Eliz. 3, pl. 8.

(*m*) 7 Rep. 18 a.

(*n*) *See* the cases referred to in Viner's Abr. tit. *Alien*, A. 2.

(*o*) *Doe* dem. *Duroure* v. *Jones*, 4 Term Rep. 300.

(*p*) *See* the arguments in the case of *Kent* v. *Burgess*, 11 Sim. 361.

(*q*) *Doe* dem. *Thomas* v. *Acklam*, 2 Barn. & C. 779.

an alien comes into England and has issue two sons, such two sons are *indigenæ*, subjects born, because born within the realm; yet such sons were formerly, for the purpose of real property, considered as aliens to one another, on account that there was never any inheritable blood between the father and them (*r*); but the contrary has since been held (*s*).

But if an alien friend comes into England when he is an infant, and always after for a long time continues here, and is sworn to the king, yet he continues an alien (*t*).

The son of an alien, whose son is born in England, is an Englishman and not an alien (*u*). The children of an American loyalist, who continued his allegiance to the Crown of Great Britain after the colonies were separated from the mother country, and settled in America, are entitled to take lands by descent in England, within the operation of the stat. 4 Geo. 2, c. 21, as natural-born subjects of the Crown of Great Britain (*x*).

(*r*) Co. Litt. 8 a.

(*s*) 1 Ventr. 413; 1 Lev. 59; and Sid. 193.

(*t*) 14 Hen. 4, 20; Br. *Denizen*, pl. 11; Fitzh. *Denizen*, pl. 3.

(*u*) Br. *Denizen*, pl. 9, cites 36 Hen. 8.

(*x*) *Doe* d. *Auchmuty* v. *Mulcaster*, 8 D. & R. 593; S. C. 5 B. & C. 771; and see *Doe* d. *Birtwhistle* v. *Vardill*, 8 D. & R. 185.

Where the subject of a British colony, upon its being ceded to a foreign power before the expiration of the time allowed for the removal of British subjects and property, left it, but returned after a year, and remained a few years, when he finally quitted it to reside in another British colony, and where he died; it not being found that he so returned to the ceded colony with the intention of making it his place of domicile, or of transferring his allegiance, it was held, that such occasional residence did not deprive him of his character and privilege of a British subject (*y*). A natural-born subject of this country may also be citizen of America for the purposes of commerce, and entitled to all the advantages of an American, under a treaty; the circumstance of his coming over here for a temporary purpose does not deprive him of those advantages (*z*).

In cases where any question arises, as to whether a person has lost his character of a British subject by going into a foreign country, all the acts which he has done in reference to his going into such a foreign country must be considered. It has, therefore, been held that the son of a British father who had entered into

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(*y*) *Jephson* v. *Riera*, 3 Knapp's P. C. 130.
(*z*) *Wilson* v. *Marryat*, 8 Term Rep. 31.

the service of France, and had taken the oath of a knight of St. Louis, and married in France a French subject, where such son was born, and afterwards served in the French army, was not thereby deprived of the character of a British subject, and was entitled to claim compensation in respect of his father's confiscated estate (*a*); these facts not being considered sufficient to show that he had thereby assumed a foreign character, and lost that character which he had unquestionably by his birth.

Questions have been also raised as to what length of absence from a person's native country will suffice to change his domicile. This was determined in the case of *Re Bruce* (*b*), where it was held that a person born in America in 1764, who went to Scotland when a minor, for the purposes of education, and, after he had maintained his majority in 1788, sailed for India, describing himself in the ship's books as an American, where he remained 30 years, when he returned to Europe, leaving the bulk of his property in Bengal; and afterwards, having been in America, visited England, Scotland, and the Continent, when he returned to

(*a*) *Wall's Case*, 3 Knapp's P. C. 13; and see *Drummond* v. *Drummond*, 2 Knapp's P. C. 295.

(*b*) 2 Crompt. & Jerv. 436.

America, entered into agricultural pursuits there, and continued to draw his property to that country until his death at New York in 1826, was an American citizen.

Aliens are, however, of two kinds; alien friend and alien enemy.

An alien friend is one with whose sovereign the Crown of England is at peace.

An alien enemy is one whose sovereign is at enmity with the Crown of England; and to constitute a person an alien enemy it appears that open acts done by his prince are sufficient; and that it is not necessary that war should be proclaimed (*c*).

A British subject (and as it seems a neutral) residing in a hostile country and carrying on trade there, has been held to be an alien enemy (*d*); and even a consul of a neutral state (*e*), or a representative of the Crown residing in a foreign state, which is at enmity with this country (*f*), will, if they carry on trade in such states, be considered and treated as alien enemies; but it appears that a mere

(*c*) Anon. Cro. Eliz. 142; and see *Watford* v. *Marsham*, Moor, 431; and *Brooks* v. *Phillips*, Cro. Eliz. 683.

(*d*) *M'Connell* v. *Hector*, 3 Bos. & Pull. 113; *see* also *O'Maley* v. *Wilson*, 1 Camp. 482; and see *De Luneville* v. *Phillips*, 2 N. R. 97.

(*e*) *Albretcht* v. *Sussman*, 2 Ves. & B. 323.

(*f*) *Exparte Baglehole*, 18 Vesey, 529.

residence in a hostile country will not have that effect (*g*).

If a neutral country be taken possession of by the forces of a state at war with this country, but the civil authorities of the invaded country continue to exercise their functions, though such country commit hostile acts against us, yet if our government do not act with hostility towards them, or show by any act that it considers them as standing in a relation of hostility, the subjects of such invaded country are not alien enemies (*h*).

The mode of ascertaining whether an alien be an alien friend or alien enemy is by the record, viz. by the production of the proclamation of war (*i*).

An alien enemy differs from an alien friend in this respect, that, while an alien friend may maintain personal actions, an alien enemy while prisoner of war is not entitled under any circumstances to be discharged upon a habeas corpus; and he cannot maintain any action at all; but after peace, it appears, he may maintain a personal action (*k*); until peace none can be

(*g*) *Roberts* v. *Hardy*, 3 Maule & Selw. 533; yet *see* as to a neutral, Wool. Commer. Law of England, p. 106, and the cases there cited.

(*h*) *Hagedom* v. *Bell*, 1 M. & Selw. 450.

(*i*) *See* Co. Litt. 19th edit. 129 b, note 2.

(*k*) Anon. 2 Black. Rep. 1324; Co. Litt. 129 a. *See*,

maintained in his favour (*l*); yet an alien friend may have such action, though resident abroad (*m*). All trading with an enemy is unlawful, unless by the king's licence (*n*); and a contract with an alien enemy made in time of war, cannot be enforced in the courts here even although the plaintiff do not sue until the return of peace, and although the plaintiff be an English born subject, resident in the hostile country (*o*). And even if a man be bound to an alien enemy, such a bond is void as against the obligees (*p*), and the king shall have it (*q*), and anybody may seize the goods of an alien enemy to his own use (*r*). Yet with a license to trade, it appears

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however, note 3, to same passage, in which it is stated, that now on declaring war, the king usually, in the proclamation of war, qualifies it by permitting the subjects of the enemy resident here to continue so long as they peaceably demean themselves, and that such persons are to be deemed alien friends in effect.

(*l*) *Brandon* v. *Nesbitt*, 6 T. R. 23, and *Bristow* v. *Towers*, ib. 35; and see *Flindt* v. *Waters*, 15 East, 260; but see *Daubuz* v. *Morshead*, 6 Taunt. 44; and *see* Wool. Commer. and Merc. Law of England, pages 278 and 279.

(*m*) Dyer, 2 b, and see *Tuerlcote* v. *Morison*, Yelv. 198, & Bulst. 134; and see *Pisani* v. *Lawson*, 8 Scott, 182.

(*n*) *Potts* v. *Bell*, 8 Term Rep. 548.

(*o*) *Willison* v. *Pattison*, 7 Taunt. 439; and see *Evans* v. *Richardson*, 3 Mer. 469, and *Exparte Schmaling*, 1 Buck. 93.

(*p*) *See* Viner's Abr. title *Alien* B.

(*q*) 1 Hale Hist. P. C. 95.

(*r*) Finch on the Law, 28; but as to the probability of the

that an alien enemy might even enter into contracts and bring actions(*s*). Independently of the license there appears to be two principles of law regulating contracts with alien enemies; first, that a contract with an alien enemy in a state of war, being of such a kind as would produce a communication between the subjects of this country and that of the enemy, would be void, and therefore, that any policy effected on the goods of an enemy would be void, because it would be impolitic to indemnify the enemy against the risk incurred in their commercial adventures; and, secondly, that however valid a contract, as originally entered into, may be, yet if, in the progress of events, the person with whom a subject of this country contracts become an alien enemy, he cannot sue on that contract. The Crown might sue during the war, as for a debt due to an alien enemy, but the latter cannot recover until peace is established(*t*).

An alien, whilst he resides here, is generally subject to our laws, and owes a local and temporary allegiance to the sovereign by whose

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Crown ever enforcing its claim, see *Furtado* v. *Rogers*, 3 Bos. & Pull. 201.

(*s*) *See* Wool. Commercial Law of England, 104, and *seq.* and the cases there cited.

(*t*) *See* the Judgment of Sir V. Gibbs, in *Antoine* v. *Morshead*, 1 Marshall, 561.

authority those laws are administered, and by whom his person and property is protected (*u*). At the same time an alien is entitled to equal justice, but not to greater indulgence, in our courts than a subject (*x*).

Aliens are, by express legislative provision, subject to and have the advantages of the bankrupt laws (*y*).

The persons of foreigners are subject to the authority of a court of equity only while in England, yet the personal property of an alien resident abroad, in this country, at the time of his death, is subject to the control of the Court of Chancery (*z*); but, in the event of his dying abroad intestate, his property will follow his person, and be distributable according to the laws of the country where he resided (*a*).

Whether the copyright of a foreigner will be protected in this country, has been a subject of some doubt (*b*). In the case of *Delondre* v. *Shaw* (*c*), the Court of Chancery refused to

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(*u*) 1 Woddes, 379; Fost. Cro. Laws, 185; 1 Hawk. Pl. c. 17, s. 5; and *see* 32 Hen. 8, c. 16, s. 9.

(*x*) *Duckworth, Bart.* v. *Taylor*, 2 Taunt. 7.

(*y*) *See* the stat. 6 Geo. 4, c. 16, s. 135.

(*z*) 1 Atk. 19.

(*a*) *Piper* v. *Piper*, Ambl. 25; *Burn* v. *Cole*, ib. 415.

(*b*) See *Miller* v. *Taylor*, 4 Burr. 2310; and *Clementi* v. *Walker*, 2 Barn. & Cress. 870.

(*c*) 2 Simons, 237.

protect the copyright of a foreigner. In that case, however, the foreigner was residing abroad, although the property for which he sought to be relieved was published here. But in the case of *D'Almaine* v. *Boosey* (*d*), the Court was disposed to hold that a foreigner who resides and publishes in this country was entitled to be protected with respect to copyright, but it was not necessary in that case to decide the point. Lord Abinger, however, in that case, referred to the case of *Bach* v. *Longman* (*e*), in which his Lordship stated that the question had in form been decided in the affirmative. And even in a case of *Bentley* v. *Foster* (*f*), also referred to by him, the Vice-Chancellor of England was disposed to hold that, if an alien resident abroad composes a work there, but publishes it first in this country, he is entitled to the protection of the laws of this country relating to copyright, and directed the plaintiff in that case, a natural-born subject, who had purchased the copyright from an alien, to bring an action at common law for the purpose of trying his right, and continued an injunction which had been granted in the case in the meantime. The action was accordingly com-

(*d*) 1 Younge & Collier, 288.
(*e*) Cowper, 623.
(*f*) 10 Simons, 329.

menced, but the defendant consented to a verdict being taken against him. But in the last-mentioned case, it must be observed, that the alien was not suing, as in the case of *Delondre* v. *Shaw*, but a British subject as the assignee of an alien. And see also the observations of Lord Abinger as to such a right, in the case of *Chappell* v. *Purday* (*g*), in which a question was raised as to whether, after a foreigner had published his work in a foreign country, he could at common law assign his copyright, limited to Great Britain, to a British subject, so as to give the assignee the benefit of the statutes relating to copyright; but that point was not determined. With respect, however, to the latter point, that question may not arise again, for by the 59th statute of the 1st and 2d years of the reign of Her present Majesty, referred to in the first chapter (*h*), foreign authors, or their assigns, may, under the circumstances and subject to the regulations therein mentioned, have the benefit of any books first published in foreign countries; but without conforming to those regulations, they or their assigns will, under the 14th section of that Act, not be entitled to the benefit of copyright in this country of any books first published abroad. With respect to the copy-

(*g*) 4 Younge & Collier, 495. (*h*) *Supra*, p. 81.

right of a foreigner in a book not first published abroad, the result of the cases would be, that he would be protected if he resides and first publishes the work here. A question appears to have been raised, whether a trust for an alien enemy of a patent or copyright could be sustained (*i*); but query whether, looking at the cases which appear to have decided that no action can be maintained in favour of an alien enemy, such a question would not be decided in the negative (*k*).

Although the law of the country to which an alien belongs does not admit of arrest for debt, still it was held at law, in the case of *De La Vega* v. *Vianna* (*l*), that an alien may be arrested in this country for a debt contracted in a foreign country. And a writ of *ne exeat* country has been issued out of a court of equity against an alien for a debt contracted by an alien while abroad with a native subject, the party suing out the writ being resident in this country (*m*); but the Lord Chancellor Eldon, in deciding that case, doubted whether such a writ

(*i*) *See* Jarman on Conveyancing, 3d edit. vol. 7, p. 538; and the cases of *Bloxam* v. *Elsle*, 1 Car. & Pay. 564, there referred to.

(*k*) See *supra* 101, and the cases referred to in note (*l*), to the same passage.

(*l*) 1 Barn. & Ad. 284.

(*m*) *Flack* v. *Holm*, 1 Jac. & Walker, 405.

would be granted against an alien, where the debt, in respect of which it was asked, was incurred by both parties while residing in a foreign country which did not admit of arrest for debt: but, query, whether the courts of equity would not now follow the decision made at common law, in the case of *De La Vega* v. *Vianna*, before referred to, in which case both parties were residing in a foreign country at the time the debt was contracted.

An alien is equally liable, while resident here, to the criminal laws of this country: consequently, if, during such residence, he commit an offence, which in the case of a natural-born subject would amount to treason, he may be dealt with as a traitor (*n*); and this whether his sovereign be in amity or at enmity with us: and he is subject to be tried here for offences committed on the high seas, under the provisions of the 28 Hen. 8, c. 15, but it appears that he is not liable to trial by special commission issued under the 33 Hen. 8, c. 23, for offences committed on shore in foreign countries (*o*). While it must be observed that aliens are entitled to have the benefit of clergy (*p*), and that a resi-

(*n*) *See* Coke's Institutes, part 3, p. 4; and *see* also the stat. 9 Anne, c. 16.

(*o*) *Rex* v. *Depardo*, 1 Taunt. 26.

(*p*) 2 Hawk. P. C. c. 17, s. 5.

dent alien, if in the kingdom at the time of the promulgation of it, is entitled to the benefit of a general pardon (*q*); at the same time it must not be forgotten that the wilfully killing of an alien, unless in the heat of war, is murder (*r*). As to an alien's further liabilities to the criminal laws of this country, *see* Viner's Abridgment, tit. *Alien*, A. 3.

At the same time, and to the same extent as an alien may become subject to the criminal laws of this country, he will while resident here be protected; and even in cases of murder or manslaughter, aliens resident abroad are within the protection of British laws where such injuries have been committed against them by British subjects (*s*).

(*q*) *Courteen's Case*, Hob. 270.

(*r*) *See* the Recorder of London's address to the grand jury, on the opening of the special commission on the 5th of April 1843, for the trial of James Dawson, for the murder of an Arab, committed in Zanzibar, in Africa, citing Sir Matthew Hale to the same effect.—*N. B.* The party in this case was tried under the provisions of the 9 Geo. 4, c. 31, s. 8.

(*s*) As to the case of an alien resident abroad, *see* the statute 9 Geo. 4, c. 31, sects. 7 & 8, and *see* the same set out *supra*, chap. 1, p. 78. A question appears to have been raised as to whether the case of an alien murdered by an alien was within the benefit of this Act. This question was, however, set at rest in a late case of Giuseppe Ozzorpardi, a Maltese, who was tried under a special commission, sued out under the above Act, for the wilful murder of Roza Sluyk, a Dutch woman at Smyrna. In that case, it was contended that in

Although an alien born cannot be a juror in a jury in a case when natural-born subjects of this realm are concerned (*t*), yet where an alien is tried in this country for a felony or misdemeanor other aliens may be part of the jury, under an order for that purpose obtained by a jury *de medietate linguæ* (*u*).

With respect to church property, aliens are prohibited from taking benefices without the king's licence (*x*), and they could not formerly be ordained as ministers without taking the oath of allegiance, which, as aliens, they could not very well take to the king of this kingdom; but aliens may be now ordained to offices of the church out of these dominions (*y*).

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order to give the court jurisdiction under that statute, both the prisoner and the deceased must be subjects of the British Crown, which in the present instance was not the case; the point raised having been reserved for the consideration of the Judges, the same was argued before them, and they were all of opinion that the case was within the stat. and therefore the objection was overruled.

(*t*) Br. *Denizen*, pl. 2, citing 14 Hen. 4, c. 19, Co. Litt. 156 b; 6 Geo. 4, c. 50, s. 3. *See*, however, the case of *Rex* v. *Sutton*, 8 Barn. & Cress. 417.

(*u*) *See* stat. 6 Geo. 4, c. 50, s. 47, and the other statutes before referred to, *supra*, chap. 1, p. 6, note (*f*).

(*x*) 1 Rich. 2, c. 3; 7 Rich. 2, c. 12; and 1 Hen. 5, c. 7, and *see* on these statutes, *supra*, chap. 1, p. 7, note (*h*).

(*y*) 24 Geo. 3, sess. 2, c. 35; 26 Geo. 3, c. 84; and 5 Vict. c. 6.

Aliens are incapable of having seats in both Houses of Parliament, or of being members of the Privy Council, or enjoying any office or place of trust either civil or military, or having any grant of lands, tenements, or hereditaments from the Crown to themselves, or to any other person or persons in trust for them (*z*). And at the same time aliens are incapable to vote in the election of Members of Parliament (*a*). And although persons becoming naturalized in any of the colonies of America now belonging to the Crown of Great Britain are entitled to hold offices of trust in those colonies (*b*), yet they are incapable of holding any offices of trust in Great Britain or Ireland; and any aliens becoming naturalized in America, or by Act of Parliament here, or made denizens, are also inca-

(*z*) *See* stat. 12 & 13 Will. 3, c. 2; and *see* Jenk. 130, pl. 4, citing 4 E. 4. 9. Aliens, as being ignorant of the laws and customs of the realm, and unable or unlikely to promote the interest of a state to which they are not naturally allied, were always ineligible to become Members of Parliament, and even though made denizens, yet were not eligible to Parliament; but persons naturalized by Act of Parliament, were formerly capable of being elected. *See* Male on Elections, 2d edit. p. 34; and *see* Coke's Institutes, part 4, p. 47.

(*a*) *See* the *Middlesex Case*, 2 Peck's Election Cases, 118. *See*, however, *Bedford Town Case*, Perry & Knapp's Election Cases, 147; and *see* Male on Elections, 2d edit. pp. 163, 164, and 243.

(*b*) *See* 13 Geo. 3, c. 25.

pable of holding offices of trust in this country, or becoming Members of Parliament or of the Privy Council (*c*).

It is to be observed, that an alien friend may be an executor or administrator (*d*), although it seems to be doubted whether an alien enemy may be an executor or administrator; although an alien enemy residing here with the king's license may be such executor (*e*).

With the exception of the provisions made by the statutes passed in the reign of King Henry the 8th with respect to alien artificers, aliens may trade as freely as other people; on paying the proper custom-house duties (*f*), except there is a custom to prevent their so doing, as to which *see* the case of *Totterdell* v. *Glazby* (*g*). But in that case it was held that, where there is a custom to exclude foreigners from exercising a trade in a corporation which gives a penalty to any but the corporation, it is bad. It is added in the marginal note: "*N.B.* Except in London to the chamberlain." But such trader must be of full age (*h*).

(*c*) See *supra*, p. 19.

(*d*) *See* 1 Williams on Executors, 163. 344. and 376.

(*e*) Ibid. 163.

(*f*) *See* Black. Comm. vol. 1, p. 372; 16th edit. and note 4 to that passage.

(*g*) 2 Wilson, 266; and the cases there referred to.

(*h*) 13 & 14 Car. 2, c. 11, s. 10.

It is to be observed, that an alien cannot take as guardian (*i*). But at the same time the father of a child, even though an alien enemy, but domiciled in this kingdom, and the mother being an Englishwoman, will be entitled to the custody of such child, though an infant at the breast of its mother, if the Court see no ground to impute any motive to the father injurious to the health or liberty of such child, as by sending it out of the kingdom; and a court of law has accordingly refused a habeas corpus applied for for that purpose (*k*). The application in that case was made on behalf of the mother of the child, on the ground of apprehension that the father meant to send the child abroad, but did not assign any sufficient reason for such her apprehension.

The mere circumstance of a person being an alien does not, as it appears, render him incompetent as a witness, either at law or in equity (*l*); although of course such a person may be otherwise incompetent, if coming under the rules of incompetency, from want of understanding, want of religious belief, infamy of character or interest. And he would, if *bonâ fide* brought from

(*i*) Ventr. 417; Molloy, 464; 7 Co. 25.
(*k*) *The King* v. *De Manneville*, 5 East, 221.
(*l*) Coke's Institutes, part 4, p. 279.

abroad, be allowed his expenses of going to and from the place of trial, and of giving his evidence (*m*), and he might be entitled to remuneration for loss of time (*n*).

The mode of taking his evidence would depend on his religion; and as to the manner in which witnesses are sworn, *see* Mr. Starkie's Treatise on Evidence (*o*).

As to the manner in which the depositions of an alien witness, who is a heathen or disbeliever, should be sworn, *see* the case of *Omychund* v. *Barker* (*p*), where it was held that the deposition of witnesses of the Gentoo religion, sworn according to their ceremonies, ought upon the special circumstances of this case to be read as evidence in the cause.

In cases where a witness could not speak English, both at law and in equity, the depositions are taken by the aid of an interpreter. In equity it has been held that, under a commission for the examination of French witnesses who could not speak English, the depositions are not to be taken in French, but must be turned by

(*m*) 1 Marsh. 563; 6 Taunt. 88; 4 Taunt. 55.
(*n*) 7 Bing. 729.
(*o*) Vol. 1, 3d edit. p. 94, and notes.
(*p*) 1 Atk. 21.

the interpreter into English, and be so taken down and returned (*q*).

As to appointing an interpreter to a witness it appears that he must be appointed on oath (*r*).

It remains to be observed that aliens are, by legislative enactment (*s*) prevented, unless made denizens or naturalized, from holding British registered shipping; and that aliens (with the exception of ambassadors or public ministers duly authorised, or their domestic servants) should be registered under the provisions and subject to the regulations in that behalf provided (*t*).

The only remaining question with respect to aliens, which it may be necessary to observe upon in this chapter, is as to the custody of their persons and the preservation of their property in the event of their becoming lunatics. It is said that a commission may be granted against a foreigner, whilst in this country (*u*). There is, however, no reported case cited in support of that proposition. Supposing such a commission could be granted, the principal

(*q*) *Belmore* v. *Anderson*, 2 Cox, 288; S. C. 4 Bro. C. C. 90.

(*r*) See *Smith* v. *Kirkpatrick*, Dick. 103.

(*s*) 3 & 4 Will. 4, c. 54 & 55.

(*t*) 6 & 7 Will. 4, c. 11; *see* the stat. more fully set out in chap. 1, *supra*, p. 72; but *see* the Report of the Committee of the House of Commons, in the Appendix, as to how far this Act has been carried out.

(*u*) Stock on Lunacy, p. 94.

difficulty would be with respect to aliens claiming to be entitled to real property. The duty of protecting those who are incapable of taking care of themselves, seems to devolve upon the sovereign, in his capacity of *parens patriæ*, as a return for that allegiance which every subject owes him: and the king, by the law of right, is to defend his subjects, their goods and chattels, lands and tenements; and therefore every loyal subject, in the contemplation of the law, is taken under the sovereign's protection, who ought to take care of the person and property of him who is unable to defend or govern himself (*x*). The custody of the estate of lunatics is derived from the statute *De Prærogativa Regis* (*y*), by which it is enacted that the king shall have the custody of the lands of natural fools, taking the profits of them without waste and destruction, and shall find them their necessaries, of whose fee soever the lands be holden; and after the death of such idiots, he shall render them to the right heirs: so that by such idiots no alienation shall be made, nor shall their heirs be disinherited (*z*). And also that the king shall provide, when any (that

(*x*) Collinson on Lunacy, 87, citing Fitz. Nat. Brev.
(*y*) 17 Edw. 2, stat. 2.
(*z*) Sect. 9.

beforetime hath had his wit and memory) happen to fail of his wit, as there are many having lucid intervals, that their lands and tenements shall be safely kept without waste and destruction, and that they and their household shall live and be maintained competently from the issues of the same; and the residue beyond their reasonable sustentation shall be kept to their use, to be delivered unto them when they recover their right mind: so that such lands and tenements shall in nowise, within the time aforesaid, be aliened; nor shall the king take anything to his own use. And if the party die in such estate, then such residue shall be distributed for his soul by the advice of the ordinary (*a*). The Act of Parliament last referred to, and the manner in which the king derives his right to take care of the land of lunatics, as hereinbefore mentioned, would seem to militate against the right of the Lord Chancellor to issue a commission against an alien, even although domiciled. It is, however, apprehended that even supposing the Lord Chancellor has jurisdiction to grant a commission against a foreigner where domiciled in this country,—and if such jurisdiction existed there would be no

(*a*) Sect. 10.

difficulty in granting a commission where a foreigner residing in this country was only entitled to personal property (*b*),—the Crown would, in the event of its being necessary to issue a commission against such a person, who might have purchased or otherwise acquired real property in this country, make special provision with respect to the rights of the Crown in such last-mentioned property, more especially as, by the statutes above referred to, the Crown has no power to take anything to its own use. A commission was, in the case of *Exparte Southcote* (*c*), issued against a subject of this country residing abroad; and in that case Lord Hardwicke, speaking of the old mode of inquiring of lunacies, namely, by writs directed either to the escheator or sheriff, and stating that he had not been able to find any precedent of a writ to the escheator in the lunacy of any person arising from thence, and showing the duties of an escheator (*d*), says, "in the case of a lunatic, where

(*b*) As to personal property being within the meaning of the statute De Prærogativa Regis, *see* Collinson on Lunacy, vol. 1, p. 93.

(*c*) 2 Ves. sen. 401; and Ambl. 109.

(*d*) Escheator was an officer appointed by the Lord Treasurer, &c., in every county, to make inquests of titles by escheat, which inquests were to be taken by good and lawful men of the county impannelled by the sheriff.

the king is to take no profit to himself, but merely a right arising from the care the king, as father of his country, is to take of all his subjects not capable to take care of themselves, there should be no writ to the escheator, who, I believe, was not the proper officer for that"(*e*). And in the case of *Exparte Marchioness of Annandale*(*f*) a question was raised whether as Otto Lewis, a lunatic therein mentioned, was declared a lunatic at Hamburgh, and a curator was appointed there, the statute extended to such as were so committed by any court abroad, as to enable the Chancellor to direct the lunatic and his curator to make a conveyance under the statute 4 Geo. 2, c. 10, being an Act to enable idiots and lunatics, who were seised or possessed of estates in fee, or for lives, or terms of years, in trust, or by way of mortgage, to make conveyances, surrenders or assignments of such estates. Lord Hardwicke made the order in that case, there being no opposition. But in both the two last-mentioned cases the lunatics were, as it is presumed, either subjects of this country or appear to have been amenable to the jurisdiction. But not-

(*e*) As reported in 2 Ves. sen. 405.
(*f*) Ambl. 80.

withstanding the above two cases, it is apprehended that no commission can be sued out against an alien residing abroad, even although he may hold personal property in this country.

Since writing the above, as to alien lunatics, it appears that a case has recently occurred before the Lord Chancellor, where the question was raised, whether the court has jurisdiction to issue a commission of lunacy against an alien; the question arose on a petition for a commission to be issued against a lady of rank admitted to be an alien born, but alleged to be domiciled in this country. But the question of jurisdiction does not appear to have been decided, and an order was taken by consent, admitting *de facto* the jurisdiction.—*See* the Jurist (*g*). The learned editor of the last-mentioned work also questions the jurisdiction of the Chancellor to grant a commission against an alien lunatic; and at the conclusion of his remarks on that subject, says "There may have been cases in which commissions have been issued against persons actually being aliens, but none such are, we believe, to be found in the printed reports;" and also submits that, "unless authorities to that effect can be produced, where the point has been

(*g*) Vol. 7, p. 453.

determined upon argument, that the language of the statute, (on which, whether it created *de novo*, or only declared the law, the whole jurisdiction rests), and the very slender information afforded by the dicta in the reported cases, are rather against than for the existence of the jurisdiction of the Great Seal to have the custody of the person and property of an alien lunatic."

CHAPTER III.

AS TO AN ALIEN'S RIGHTS IN LEASEHOLD ESTATES, AND PERSONAL PROPERTY, AND HIS POWER OF DISPOSING OF THE SAME.

WITH the exception of leasehold estates, an alien friend is entitled to hold personal property in this country in the same manner as a British subject, including such personal property as may be left to him as a legatee (*a*). It is said, however, that a legacy to an alien enemy will be forfeitable to the king (*b*); but if a legacy be left to an alien, who, when it is left him, is an alien enemy, but before any title is set up by the Crown ceases to be such alien enemy, in consequence of peace being proclaimed between his country and this, he will be entitled to the legacy (*c*). With regard to leasehold property, the purposes for which the

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(*a*) *Calvin's Case*, 7 Coke, 17.

(*b*) See *Attorney-general* v. *Weedon*, Parker, 267; but *see* Will. on Executors, p. 164.

(*c*) *Attorney-general* v. *Weedon*, Parker, 267; and see *Attorney-general* v. *Duplessis*, ib. 144.

leasehold property was required regulates his right to the holding of the same.

As previously observed, a lease to an alien was good at common law (*d*).

The liberty of an alien to hold leasehold property seems to depend principally on these grounds: whether he intends the house merely for his own habitation, or for the purposes also of carrying on his trade or merchandize (*e*). Lord Coke says, "As to a lease for yeares of a house for the habitation of a merchant stranger, being an alien, whose king is in league with ours, and a lease for yeares of lands, meadows, pastures, woods, and the like; for if he take a lease for yeares of lands, meadows, &c. upon office found (*f*), the king shall have it;

(*d*) *See* note (*n*), *supra*, p. 13.

(*e*) *See* Co. Litt. 19th edit. 2 b., and note 7 & 9; and *see* the cases referred to in that passage and note.

(*f*) With respect to what is office found, it is to be observed, there are two sorts, an office of entitling, which is under the great seal; and an office of instruction, which is under the seal of the Exchequer. The office of entitling is an inquest, which gives the king a title, as here in the case of Aliens, &c. *Page's Case*, 52. *See* Gilb. Hist. View of the Exchequer, 132, 133, & 134; Gilb. Hist. Chan. 12. But the king has a title before office found; the office vests the possession, 5 Co. 52; Hob. 153; Parker, 152; and the office hath relation for the possession of the alien, but it hath no such possession to say that the alien never had the property. Anon. Golds. 102,

but of a house for habitation he may take a lease for yeares, as incident to commerce, for without habitation he cannot merchandize or trade. But if he depart or relinquish the realm, the king shall have the lease. So it is if he die possessed thereof, neither his executors or administrators shall have it, but the king; for he had it only for habitation as necessary to his trade or traffique, and not for the benefit of his executor or administrator. But if the alien be merchant, then the king shall have the lease for yeares, albeit it were for his habitation. And so it is if he be an alien enemie. And all this was so resolved by the judges assembled together for that purpose in the case of Sir James Croft, Pasch. 29, of the reigne of Queene Elizabeth" (*g*).

The rights of aliens in leasehold property are,

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pl. 7. If, upon an inquisition being granted in favour of the Crown for the purpose of trying whether a person is an alien or not, and the finding on such inquiry is that the person is not an alien, such finding is not conclusive against the Crown; and if there is ground for it, the Crown is entitled to a *melius inquirendum*, but no new commission. And, if the second finding is the same as the first, such second finding is conclusive against the Crown. See *Exparte Duplessis*, 2 Ves. sen. 538. As to the time when the Crown may assert its rights in case of a joint tenancy, *see* note (*g*), *postea*, chap. 4, p. 132.

(*g*) And see *Sir Upwell Caroon's Case*, Cro. Rep. temp. Cha. p. 8; *King* v. *Holland*, Styl. 20; All. 14; and 1 Rol. Abr. 194.

in some respects, regulated by the 13th section of the 16th chapter of the 32d year of the reign of Henry the 8th, by virtue of which all leases of any dwelling-house or shop made to any stranger artificer or handicraftsman, not being denizens, are void and of no effect (*h*). In favour of aliens this law has, however, been construed very strictly (*i*).

Questions have however arisen as to whether the statute above referred to extends to agreements for leases; and it appears to have been decided, that if an alien artificer occupies a dwelling-house or shop under an agreement, which does not amount to a lease, as if he be tenant from year to year, or for one year, or a shorter time, an action for use and occupation will lie against him, notwithstanding the statute; and in the case of *Pilkington* v. *Peach* (*k*), it was said by the Court, that there are ways and means to evade the statute, as to make an agreement for so long as you and I please, at the rate of 20*l.* a year, and an assumpsit will lie thereon, or you shall have my house for so long as you and I please, for so much as 'tis

(*h*) *See* this stat. more fully set out, *supra*, chap. 1, p. 12.

(*i*) *See* 1 Sid. 309; 1 Saund. 7; 2 Show. 135; 3 Mod. 94; 3 Salk. 29.

(*k*) 2 Show. Rep. 135.

worth; and if an alien-amy occupies a dwelling-house of the yearly value of 10*l.* as such tenant, for forty days, he gains a settlement under the stat. 13 & 14 Car. 2, c. 12 (*l*). But in the case of *Lapierre* v. *M'Intosh* (*m*), where a person had agreed in writing to grant and demise to an alien artificer a good and valid lease of a dwelling-house, for the term of twenty-one years, at the clear yearly rent of 70*l.*, payable quarterly, to commence from Michaelmas then next, the said lease to contain usual and proper covenants, especially, to paint, pay rates, taxes, &c., and which the alien had agreed to accept and execute a counterpart thereof; the said lease to be determinable at the expiration of the first seven or fourteen years, on the alien giving six months' notice thereof in writing, and for which the alien had brought an action; a plea, that the plaintiff was an alien artificer, and that defendant unlawfully agreed to grant, and plaintiff to take, a lease of the house for twenty-one years; and that plaintiff took possession on the faith and terms of such agreement, and with the view and intent to carry the same into execu-

(*l*) *See* note 1 to *Jeavons* v. *Harridge*, 1 Wms. Saunders, 8; referring to *Pilkington* v. *Peach*, 2 Show. 135; and the *King* v. *Eastbourne*, 4 East's Rep. 103.

(*m*) 9 Ad. & Ell. 856; and 1 Perr. & Dav. 629.

tion, and not otherwise, &c.; therefore, that defendant entered, &c., the door being open, and no person therein of whom he could demand possession, was held good, as showing either a lease void by stat. 32 Hen. 8, c. 16, or possession in pursuance of an illegal agreement for such a lease; and it was held, in either case the plaintiff could not maintain the action. This case must have been decided on the ground that the contract amounted to a lease, and the same doctrine was admitted in the case of *Pilkington* v. *Peach* (*n*).

A lease to a vintner is not void within the provisions of the above-mentioned statute, because a vintner was not considered a person exercising an art or trade within the meaning of the above statute (*o*).

But marriage is not a gift in law of a term for years to an alien, for his wife may sue and be sued as a feme sole (*p*).

With respect to the right of an alien to dispose of his personal property, it is presumed that an alien friend may dispose of the same, saving, however, as to leaseholds; and, with respect to leaseholds, of such leaseholds only as an alien is

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(*n*) 2 Show. 135.

(*o*) *Bridgham* v. *Frontee*, 3 Mod. 94.

(*p*) *Theobald* v. *Duffoy*, 9 Mod. 104.

permitted by law to hold. An alien enemy, without the king's licence to reside in this country, is incapable of making any will; but, with such licence, it appears he may (*q*). But an alien friend, without any such licence, may bequeath personal estate (*r*), and even of a lease for years, which an alien has for his habitation for the purposes of commerce, it is presumed an alien friend may make his will; for, in *Sir Upwell Caroon's Case* (*s*), administration was granted to divers persons, who were aliens, of personal property belonging to aliens, part of which consisted of leases for years.

If an alien dies intestate, his personal property here will, as before observed, be disposable according to the laws of the country in which he was domiciled at the time of his death (*t*).

The will of an alien, if he left no personalty in this country, need not be proved here, unless his executors institute a suit; but if he left personal property here, it must be proved, even although the will was made abroad (*u*).

The will of an alien, if domiciled here, and, as

(*q*) *See* 1 Williams on Executors, 3d edit. p. 10.

(*r*) 1 Black. Comm. 372.

(*s*) Cro. Rep. temp. Cha. p. 8.

(*t*) See *supra*, p. 104; and *see* 2 Williams on Executors, 3d edit. pp. 1197–1202.

(*u*) *See* Williams on Executors, p. 269, *et seq.*

it would seem also, if domiciled abroad, if the party dies possessed of property here, and it is necessary to prove the will here, is liable to probate duty (*u*).

With regard to legacy duty attaching on property of an alien, it is to be observed that, if a foreigner who is possessed of property in this country and dies domiciled abroad, and even appoints an English executor, and by his will bequeaths it to English legatees, such property will not be liable to legacy duty. This was held in the case of *Re Bruce* (*x*). In that case Sir John Bayley, who gave judgment, said, "Had he (thereby meaning the testator) made foreign executors, and given no legacies except to foreigners, there can be no doubt but that the executor would have been entitled to have removed the whole of the property from this kingdom, and to have paid the foreign legatees in full, without deduction, subject to no burden in this country, except the single burden of the probate duty, which would be to be imposed upon his property which he suffered to be in this kingdom. If his executors had been foreigners, or if the legatees had been foreigners, then they would not have been liable to the

(*u*) *See* the Judgment in *Re Bruce*, 2 Cromp. & Jerv. 451.
(*x*) 2 Cromp. & Jerv. 436.

legacy duty. How can it make any difference that the executor is a subject of this realm? He is merely the medium by which the property belonging to the testator is to be distributed. How can it make any difference that the legatee is a subject of this kingdom? If the legatee had been a foreigner, he would have got his 100 per cent.; and it is a great discouragement against a testator leaving his property to a British subject, that, instead of leaving him 100 per cent., he can only leave him 90 per cent., because the residue of the property will be given to persons who constitute the state of this kingdom. Therefore, upon the principle that he is not a British subject, not bound by the laws of this kingdom, and that he is entitled to consider his property, though locally here, as not being British property, but American property, we are all of opinion that the legacy duty in this case is not payable." But whether property situate abroad, or in this country, belonging to an alien who is domiciled here, is liable to legacy duty, appears to be a question which has not been determined; although it would seem that if such a question were to arise, it must be determined in the affirmative, particularly looking to the question of domicile (*y*).

(*y*) *See* Williams on Executors, 2d vol. p. 1288.

CHAPTER IV.

AS TO AN ALIEN'S RIGHTS IN REAL PROPERTY; AND HIS POWER OF DISPOSING OF THE SAME.

WITH respect to real property, the disability of aliens to hold land arises from the policy of the law (*a*); and, inasmuch as in England it is a settled principle of tenure, that all lands in the kingdom are holden of the Queen as the sovereign or lady paramount, an alien could not hold them without acknowledging allegiance to the Queen; and which such alien, while his allegiance remained to his former sovereign, could not do (*b*).

An alien is entitled to purchase in fee simple lands, tenements, or hereditaments, although he cannot hold them, for, upon office found (*c*), the king shall have them (*d*); and even on a cove-

(*a*) 1 Black. Com. 372; *Attorney-general* v. *Duplessis*, Parker, 144; 5 Bro. P. C. 91.

(*b*) *See* 1 Black. Com. 367; and *see* further, as to allegiance, *supra*, chap. 1, p. 2, note (*a*).

(*c*) As to what is office found, *see supra*, chap. 3, p. 123, note (*f*).

(*d*) Co. Litt. 2 b, and *see* same book, 310 b; and see *Duplessis* v. *The Attorney-general*, 1 Bro. P. C. 415; S. C. 2 Ves. 286; and *Burk* v. *Brown*, 1 Atk. 398.

nant to stand seised, a use will arise for an alien (*e*); but of course the same result will follow as in the case of a purchase, and the same would take effect where an alien purchased lands in joint tenancy (*f*); and the king would, on office found, be entitled to a moiety (*g*); and a gift to an alien of a contingent interest in land is void as against the Crown (*h*); and even all equitable interests in land given to him are to the same extent void (*i*). And as to the right of an alien in land until office found (*k*), it has been held, that where an alien had by purchase lands in tail, with remainder to *B.* in fee, and the alien, before office found, suffered a common recovery

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(*e*) Godb. 275.

(*f*) Goldsb. 29, pl. 4; Lev. 47, pl. 61; Dyer, 283, pl. 31.

(*g*) Co. Litt. 186 a. It appears to be, however, a question whether, if office is not found while the joint tenancy continues, and the natural-born subject with whom the alien is joint tenant survives the alien, the whole would not survive to him in preference to any claim by the Crown. Mr. Butler, in his notes to Co. Litt. 180 b, note 2, makes the following remark: "If the natural-born subject survives the alien, and then the king's title is found by office, shall it, by relation to the creation of the joint tenancy, defeat the subject's title by survivorship?" *See* that note, and the cases there referred to, and *see* note (*f*), *supra*, chap. 3.

(*h*) *Attorney-general* v. *Duplessis*, Parker, 144.

(*i*) *Attorney-general* v. *Sands*, Hardres, 495; and *see* Roll. Abr. 194.

(*k*) As to what is office found, *see* note (*f*), *supra*, p. 123.

and died without issue, the recovery was good, and bound the remainder-man; but the fee acquired in that case went to the Crown on office found (*l*). But an alien may maintain an elegit affecting real estates (*m*), and also may have remedies for his debts against the lands of his debtors by statute merchant or of the staple (*n*). With respect to copyholds, it appears to be doubtful what rights an alien may acquire therein, for the lord is not to be prejudiced by losing his services and fines (*o*); but it is laid down in Watkins on Copyholds (*p*) that an alien cannot be a copyholder; and it should seem that if an alien purchases any copyhold property, it would escheat to the lord (*q*). However, the title of an alien in all respects will be good against all persons except the Crown in the case of freeholds, and as against the lord in case of copyholds.

(*l*) Goldsb. pl. 7 & 10; Mod. 124.

(*m*) So said arguendo in *Du Hourmelin* v. *Sheldon*, 1 Beav. 84.

(*n*) 13 Edw. 1, stat. 3; 27 Edw. 3, stat. 2, c. 9; and *see* Viner's Abr. tit. *Alien*, A. pl. 9.

(*o*) Roll. Abr. 194; Hob. 214; Cro. Jac. 512; Alleyn, 14; Style, 20, 21. 41. 76; Parker, 156; and 1 Sand. on Uses and Trusts, 269.

(*p*) Vol. 1, p. 31.

(*q*) Co. Litt. 19th edit. 2 b, note 4.

To the same extent as an alien cannot purchase lands in his own name, he could not become seised to the use of or in trust for another person (*r*).

With respect, however, to the right of an alien to take as a *cestui que* use or *cestui que* trust, it appears that an alien would not be entitled to take in such a character where the land itself is the subject to which he would be so entitled (*s*). And it is to be observed that even where there was a power given in a will to the trustees of it to sell, and to stand possessed of the product of the sale for aliens, such a devise has been held void so far as it related to them. Thus in the case of *Fourdrin* v. *Gowdey* (*t*), where a testator gave and bequeathed all his freehold, copyhold, and leasehold property, and all his household goods and furniture, plate, wines, linen, and every other property of every other denomination, to be sold by his executors as soon as conveniently might be after his decease, and disposed of as he should thereafter direct; and he enjoined and

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(*r*) 1 Co. Rep. 122; Dyer, 283 b; Poph. 72; *Fish* v. *Klein*, 2 Mer. 431; and *King* v. *Boys*, Dyer, 283 b.

(*s*) *Holland's Case*, Alleyn, 14; Styl. 20; and *postea*, 1 Roll. Abr. 194, pl. 8; 3 Ch. Rep. 35; *Attorney-general* v. *Sands*, Hard. 495.

(*t*) 3 Mylne & Keen, 383.

requested his heir-at-law to concur with his executors in the sale of his freehold and copyhold estates; and as to all other his personal estate whatsoever, he directed his executors to pay thereout a number of pecuniary legacies which he specified. Lastly, he bequeathed all the residue of his property, after payment of his debts and funeral and testamentary expenses, equally amongst such of his three brothers and sister, described as then residing in France or elsewhere, as might be living at his decease; the heir as well as the persons entitled to the residue being aliens. Sir John Leach, admitting that an alien might take beneficially money or other personal estate, "not consisting of chattels real, decided that the Crown was entitled to the real estate, and not the parties beneficially entitled," and in his Judgment said, "It was said indeed that this is not a devise of lands, for that the testator directs the lands to be sold, and the surplus of the produce to be paid to his residuary legatees; so that it is to be considered as in effect a bequest of money. I concur with the counsel that there is here no devise to the executors, but simply a power given them to sell, followed by an express direction that the heir, upon a sale, shall confirm the title of the purchaser. The heir, therefore, under this will, takes the real estate as a trustee for the pur-

poses of the will, taking it as land, as the testator possessed it, and not as money; and when it has been converted into money, the persons to whom it belongs will take it in the shape into which the testator desired it to be converted; they will take it as personal estate. In the consideration of law, however, this property was real estate, which descended to the heir, with a mere power of sale to the executors; and the argument wholly fails that this is a bequest of money, and not a devise of land. It was argued, moreover, that, inasmuch as the alien devisees are to take it not as land, but as money, the law which incapacitates aliens to take any benefits in lands would not apply. The testator, however, has given them the lands in question, subject only to the charge imposed on it by his will, namely, payment of his debts and legacies; and aliens can no more take an interest in land (which this would be) than the land itself." But in his Judgment Sir John Leach adopted, as mentioned by Lord Chancellor Cottenham in his Judgment in the case of *Du Hourmelin* v. *Sheldon* (*u*), the argument of the counsel on behalf of the Crown, that the will vested no estate in the executors, who took a mere power of sale,

(*u*) 4 Myl. & Craig, 531.

the estate itself devolving upon the heir, or, as the heir was an alien, upon the Crown, and that the testator did not direct a total conversion, but only a conversion for certain purposes. But on a second argument, which was heard before Sir John Leach, in the case of *Fourdrin* v. *Gowdey*, the then Attorney-general, Sir John Campbell, admitted that where the purchase and conveyance are made directly from the executors, the purchaser claims as devisee, and the title of the Crown is excluded.

In the case, however, where land has been directed to be sold out and out, and the land converted into personalty, for the benefit of aliens, it appears to be quite clear that they are entitled to the produce of the land as against the Crown, and that the reasoning that the gift of the produce of land is equivalent to land itself will not hold in such a case. This was decided in the case of *Du Hourmelin* v. *Sheldon* (*x*). In that case the testatrix, Elizabeth, the wife of Charles Henry Sheldon, having six daughters, and having power to appoint her real estate, by her will, dated the 9th day of October 1824, duly executed, appointed her estate to Edward Sheldon, James Somerville Fownes, and Richard

(*x*) 1 Beavan's Reports, 79.

Samuel White (who were natural-born subjects), and to their heirs and assigns, unto and to the use of them, their heirs and assigns, for ever, upon trust, that they should make sale and absolutely dispose of the same, to any person willing to purchase, and should convey and assure the same to the use of the purchasers, their heirs and assigns; and should, on payment to the trustees of the purchase-money, give receipts for the same, which receipts were to be effectual discharges to the purchasers, and should discharge them from being obliged to see to the application, and from being answerable or accountable for the misapplication or nonapplication thereof. And she directed that the trustees should stand possessed of the moneys to arise by such sales, upon trust, after payment of the costs and expenses of the mortgages affecting the estate, to invest the residue in the public funds, or in government or real securities, after the death of Charles Henry Sheldon (who died in 1826), for certain persons in sixth parts or shares, some of which sixth shares were given to persons who were aliens. A suit was instituted by some of the aliens claiming under the will to have the will established and the trusts thereof carried into execution, and the real property having been sold by virtue of a decree made in the suit, and

exceptions having been taken to the title by the purchaser under the decree, the exceptions came on to be heard before the Master of the Rolls, Lord Langdale; and in that case it was argued on behalf of the purchaser, that if land be devised to an alien, he cannot hold it against the Crown; and if he contracted for the sale, and filed a bill specifically to enforce the contract, it was clear the bill must be dismissed with costs, and that the same principle was applicable if the devise were made to an alien for life, or for any other estate; and that to the extent of his interest, the devise enured for the benefit of the Crown. Again, that if the devise be to *A.*, in trust, or for the use of an alien, the same rule applied; and that supposing an estate were devised to an English subject, in trust, to sell and pay the whole proceeds to an alien, that particular form of devise would not make any difference, and that the alien would, in equity, be regarded as the absolute owner of the estate, and he might insist on the trustees not selling, and on taking the real estate in specie. Again, that if the alien were only partially interested in the produce, the same objection would arise; for he might insist on paying off the charges and retaining the estate; and the case of *Fourdrin* v. *Gowdey* was cited. But Lord Langdale, in giving judgment, said, "It is obvious, that if the

trusts be performed as the testatrix intended, the land will remain vested in the trustees till a conveyance is made to the purchaser, and never can be vested in any alien, and that the purchase-money, after paying costs and satisfying incumbrances, being invested in stock, the interest of the aliens will be in such stock, and not in land. It appears also, that, whether we regard the land, or the stock into which the testatrix intended it to be converted, there is at the present time no vested interest in any alien. The vested interests are in English subjects. The interests in aliens are contingent and expectant on the determination of those vested interests. The English subjects, in whom the interests are vested, are entitled to have the trusts performed, and no claim of the Attorney-general to have secured for the Crown the interests which were intended for aliens, could have prevented the decree for sale. It is not a case in which they being entitled, or the Attorney-general, or the Crown being entitled, can exercise an option, and elect that there shall be no conversion. There is a decree for sale; the sale has taken place; and when it is complete, the money will be the only property in which the aliens will have any interest. But it is argued, that taking the case as it stood at the death of the testatrix, and as it must remain

until the conversion shall be completely made, the land is the source from which the money, or stock, in the shares of which the aliens are to be interested, is to be realised; and that, in that respect, the aliens have an interest in the land. And, as the gift of an interest in land to an alien may be good, and the alien, though capable of taking the gift, cannot hold it for his own benefit, but for the Crown only, it is contended that the Crown has here a right to that interest, and, therefore, to an interest in the money, or stock, which is to arise from the sale of the land." And after adverting to the case of *King* v. *Holland* (*y*), in which it was the expressed opinion of one of the Judges, that an alien could not compel feoffees to execute a use; and of another of the Judges, that though the king should have the use, yet he could not seize the land itself, but by equity might have a decree for the land; or, in other words, might in a court of equity, compel the trustees to execute the trust for his benefit,—his Lordship said, "This doctrine is applicable to a case in which land is given to a trustee, to be held by him in trust for an alien; in which case the alien takes in the land a permanent equitable interest, which might be

(*y*) 1 Roll. Abr. 19 b; Styl. 20; Alleyn, 14.

attended by inconveniences, nearly the same as those which are considered to attend a permanent legal interest vested in an alien; but the same doctrine is not necessarily applicable, nor do similar reasons extend to a case in which no interest in land was intended ever to vest in the alien; in which the legal estate is vested in the trustees, and intended to pass from them to the purchaser, and in which the interest of the alien, and his right, if right he has, is only to have the land converted into money, and is so far of a transitory nature, that it endures only till the purposes of the donor can be performed, by the due execution of the trusts he has created." And again, "When the land is converted into money, as the trust intends, no objection in respect of tenure, fealty, or allegiance remains; and it has been considered to be in conformity with the policy of the law that aliens should be interested in the English stocks or funds." Lord Langdale, in referring to the case of *Fourdrin* v. *Gowdey*, did not entirely disapprove of that case, but thought that, having regard to the expressions which fell from Sir John Leach, and his decision as to the leaseholds in that case, he would probably have considered such an interest as was given to the aliens in the case of *Du Hourmelin* v. *Sheldon*, as an interest which might be

claimed by the Crown; and, in that respect, *Fourdrin* v. *Gowdey*, if to be sustained, appeared to Lord Langdale to be an authority for the exceptions which were taken to the Master's Report in the case of *Du Hourmelin* v. *Sheldon*, consequently, the exceptions were overruled in the last-mentioned case, and the title considered as binding on the purchaser. The case of *Du Hourmelin* v. *Sheldon* was afterwards heard on appeal before the Lord Chancellor Cottenham (*z*), and the Attorney general having been made a party to the suit, and the cause having been fully argued before his Lordship, his Lordship said, "If the Crown be entitled in this case, it must be entitled to all money left or payable to aliens, if raised out of lands in this country; and if so, why is this title of the Crown not to operate against the legacies of alien legatees, or the dividends of foreign creditors of a bankrupt, if such legacies and dividends be raised out of land? and how are foreign creditors entitled to payment of their debts under the decrees of the Court, or in the administration of the estates of deceased debtors, if the money applicable to such payment be the produce of land (*a*)? It was argued that after

(*z*) 4 Myl. & Craig, 525.

(*a*) *See* Jarman on Wills, vol. 1, p. 61, note (*o*), as to the rights of alien creditors against the land of their debtors.

payment of the charges, the legatees might elect to take the estate as land; but not only has that not taken place, but what the Attorney-general claims is money, and not land which has been sold. The incapacity of aliens to hold land is founded upon political and feudal reasons, which do not apply to money. The testator has given to his legatees no option; but if he had, or if the law would have given it, there can be no reason for the legatee forfeiting money which he may enjoy, because he might have elected, instead of such money to take land, which he cannot. Many authorities were referred to, but none of them bear out the proposition contended for on behalf of the Crown. Decisions, that aliens cannot enjoy, against the Crown, trusts of land, any more than the land itself, leave untouched the present question. *Roper* v. *Radcliffe* (*b*) was relied upon, although that was the case of a Papist, and not of an alien. By the Act 11 & 12 Will. 3, c. 4, all estates, terms, and other interests and profits whatsoever out of lands, to or in trust for the benefit of Papists, were made void. The testator conveyed lands to trustees, upon trust to sell, and with the proceeds to pay certain debts and to dispose of the residue as he should by

(*b*) 9 Mod. 167.

deed or will appoint, and in default, to dispose thereof for the benefit of himself and his heirs. No sale took place, and the testator, by his will, referring to the trusts, gave certain sums to be paid out of the proceeds of the sale, and then gave all the rest and residue of his estate, real and personal, and all his remainder, whether in lands or other personal estate, to certain persons who were Papists. It was decided that the devisees had an interest in the lands so remaining unsold, within the meaning of the Act. This case is inapplicable, not only because the question arose under an Act of Parliament which has no reference to the situation of the parties in this cause, but because the state of the property was altogether different; and yet this was the case which has the strongest analogy to the present, excepting that of *Fourdrin* v. *Gowdey*. Being of opinion that there is no principle upon which the claim of the Crown can be supported, and that there are no authorities compelling me to decide in its favour, I do not hesitate to affirm the judgment of the Master of the Rolls, pronounced under circumstances much less favourable to the parties claiming under the will,—being in a contest with the purchaser,—and to declare that the Crown has no right to the property in question." The Lord Chancellor, in giving his judgment in the case of *Du Hourmelin*

v. *Sheldon*, did not overrule the case of *Fourdrin* v. *Gowdey*, but said with respect to that case, "Whether or no the grounds upon which this judgment is founded will support it, is a question which will be to be decided when facts identical with the circumstances of that case shall arise. It is sufficient, at present, to observe that such is not the present case, in which it cannot be said that there is not an absolute conversion, but merely a devise of lands subject to a charge. The purchase and conveyance must be derived from the trustees, in which case it was admitted that the title of the Crown is excluded."

The result of the authorities on the above subject appears to be that where upon the face of the deed or will declaring the trusts of the land there is a total conversion of the land into money, aliens may be entitled to the money without any right of the Crown; but where the land is not absolutely converted and there is a discretion left in the trustees as only for particular purposes, there aliens are not entitled to the money which might possibly be derived, as, until the land were sold, it would only be an interest in land.

And, as observed by a learned writer (*c*), a

(*c*) Jarman's Conveyancing, 3d edit. 5th vol. p. 306.

conveyance of land being made to a subject, in trust, on default in payment, to an alien, of a principal sum and interest on a given day, to sell, and out of the proceeds to pay over to the alien the amount due to him, with a clause negativing any right in the alien to foreclose the land, or receive the rents and profits, would be a valid security, and one which, at least, would not seem to be obnoxious to the reasons of public policy before alluded to, as the alien mortgagee could only claim money previously advanced by him, and interest.

The doubt as to an alien being entitled to take any interest in land was strengthened by the statute before referred to (*d*), enabling alien friends or alien enemies to lend money by way of mortgage on lands in the West Indies; but now by that statute any alien friend or enemy may lend money at interest not exceeding 5 *l.* per cent. on security of any estate in Her Majesty's colonies in the West Indies, under the regulations and with such remedies as therein mentioned, but with divers forms of remedies given to British subjects in the manner of taking possession or foreclosure.—*See* the Act and its provisions, *supra*, p. 45.

(*d*) 13 Geo. 3, c. 14. See *supra*, c. 1, p. 45.

With respect to the capacity of an alien to make a will of real estate, the better opinion seems to be that an alien may make a will, more especially considering that his acts are only voidable, and that as against the Crown. It is said by one learned author (*e*), that aliens are incapable of devising real estate; but the contrary is entertained by Mr. Jarman, in his Treatise on Wills (*f*), and he says that such wills are merely voidable, and that the lands devised would vest in the devisees, even although aliens, until office found (*g*).

As observed in the last chapter with respect to the rights of an alien husband in the leasehold property of his wife, so with regard to real estate, it is to be observed that an alien cannot be tenant to the curtesy of his wife's real estate, because he is not entitled to hold real estate for his own benefit (*h*).

(*e*) Roberts on Wills, vol. 1, p. 35.

(*f*) Vol. 1, p. 34.

(*g*) Jarman on Devises, vol. 1, p. 59.

(*h*) *Calvin's Case*, 7 Rep. 25 a; *Collingwood* v. *Pace*, Vent. 417; Roper on Husband and Wife, vol. 1, p. 5.

CHAPTER V.

AS TO THE WIFE OF AN ALIEN, AND OF AN ALIEN WIFE, AND THEIR RESPECTIVE RIGHTS.

THE wife of an alien, as before observed, is in law treated as a *feme sole*, and may sue and be sued as such, and therefore marriage is not a gift in law of a term of years to an alien husband (*a*).

With respect to the rights of the wife of an alien in the personal property of her husband, it is apprehended that, in the event of her husband dying intestate and domiciled here, she will be entitled, under the Statute of Distributions (*b*), as one of his next of kin, to the same extent as the wife of a British subject would be entitled. But of course if the husband was domiciled out of this kingdom, the rights of his widow in any personal property which he left here would be regulated by the laws of the country where the husband so died.

(*a*) *Supra*, p. 127.

(*b*) 22 & 23 Car. 2, c. 10, explained by 29 Car. 2, c. 30.

But with respect to her rights in the real estate of her husband, she would not be entitled to dower or free-bench of any freehold or copyhold property of which her husband, being an alien, was at any time possessed during her lifetime; because, being an alien, he could not hold property absolutely.

In the same manner, if a British subject was to take an alien to wife, such wife would not, in the case of her surviving her husband, be endowable out of the real estate of her husband, except the consort of the king. *See* Co. Litt. (*c*), citing also the case of Edmond, the brother of King Edward the 1st, who married the Queen of Navarre (*d*). Unless, perhaps, in the case of the British subject marrying with the licence of the king, for it appears that by a special Act of Parliament, not printed, Rot. Parl. 8 H. 5, n. 15, all women aliens who from thenceforth (*desores ou avant*) should be married to Englishmen by licence of the king, are enabled to demand their dower after the death of their husbands, to whom they should in time to come be married, in the same manner as English women (*e*). And if

(*c*) Co. Litt., 19th edit. 31 b; *Calvin's Case*, 7 Rep. 25 a; and see *Collingwood* v. *Pace*, Ventr. 417.

(*d*) But *see* note 10, same passage.

(*e*) Co. Litt., 19th edit. 31 b, note 9; and *see* same book, 129 b, note 4.

a British subject marry an alien wife even without licence, and she is made denizen, she would not be entitled to dower; but the contrary would be the fact were she naturalized (*f*).

The widows of aliens, even although such widows may be aliens, will be entitled to dower out of real property of their husbands situate in any of the colonies or dependencies of this country, which have been conquered or ceded to this kingdom, where the alien laws have not been specially introduced (*g*).

With respect to the rights of a British subject in the real estate of his wife, an alien, it appears that the husband is not entitled to such real estate in right of his wife, and that there is no instance where it has been held that where a person, by marrying an alien woman, is seised of the estate purchased by her, and that such possession by the alien wife must be for the benefit of the Crown (*h*).

As to the right of an alien wife to personal property independently of her husband, and as to whether, if her husband should be attainted of treason, she should forfeit her portion to the

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(*f*) Roper on Husband and Wife, vol. i. p. 340.

(*g*) *See* the Judgment in the case of *The Mayor of Lyons* v. *The East India Company*, 1 Moore's P. C. p. 278.

(*h*) See *Burk* v. *Brown*, 1 Atk. 398.

Crown, this appears to be a matter of doubt.—*See* the case of *Drummond* v. *Sir Matthew Decker* (*i*).

It should be observed, that so strict are the Courts as to the property within their jurisdiction, that if a woman, a natural-born subject, who has a trust, marries a foreigner, she will be discharged from her trust, even though she denies the intention of quitting the country, and states her desire of continuing the trust (*k*).

(*i*) 9 Mod. Reports, 100; and *see* the other cases there referred to.

(*k*) *Lake* v. *De Lambert*, 4 Ves. 592.

CHAPTER VI.

AS TO DESCENT FROM ALIENS.

As an alien cannot hold land, so he cannot have heirs (*a*); and if his son, or other person claiming to be his heir, should take possession of any real property which such alien may have purchased during his lifetime, of course he could only hold the same until office found, and seizure by the king; but real property situate in any countries which may have been ceded to or conquered by this country, and where the alien laws have not been specially introduced, would descend to the heir or heirs of such alien ancestor (*b*).

But, although an alien cannot have heirs, still his son, born in England, may succeed to any real property to which his wife, being a natural-born subject, and capable of inheriting, may be entitled to. Thus, it has been held, that if an alien has issue, a son, by a wife inheritrix, which

(*a*) 2 Black. Comm. 249; Co. Litt. 2 b.

(*b*) *Mayor of Lyons* v. *East India Company*, 1 Moore's P. C. 278.

son is born in England, this son, after the death of the wife, shall inherit the land (*c*); for it seems the blood of the mother suffices to make them inheritable one to the other. And it appears that if a husband denizen takes wife an alien, or wife takes husband an alien, and they have issue, the issue shall inherit to the father in the first case, and to the mother in the second (*d*).

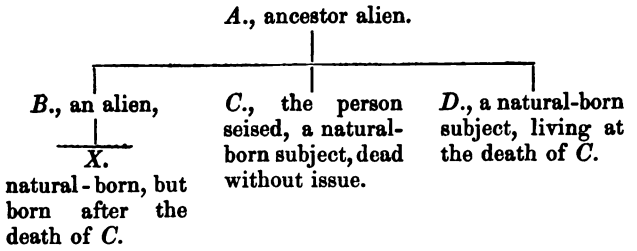
Independently, however, of the question as to the right of a person claiming as heir of an alien with respect to the property purchased by an alien during his lifetime, the son of an alien may, by naturalization, or through being born in this country, thereby become a natural-born subject, and may die possessed of real property; and yet, in consequence of his father or mother being an alien, the heir of such purchaser would not, according to the rules or canons of inheritance, were it not for the statute 11 & 12 Will. 3, c. 6, and 25 Geo. 2, c. 39 (*e*), have been enabled to make his title by descent from any of his ancestors, lineal or collateral.

(*c*) Jenk. 203, pl. 27; and *see* Co. Litt. 19th edit. 12 a, note 7.

(*d*) Co. Litt. 12 a, note 7.

(*e*) *See* these statutes more fully set out *supra*, chap. 1, p. 18 and 41.

By virtue of those statutes, however, such heir is enabled to make a title, notwithstanding his father or mother, or other ancestor, by, from, through, or under whom they derived their pedigree, were aliens. A case of pedigree under those statutes may be stated thus:

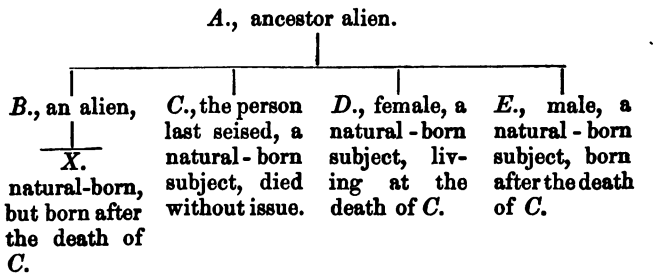


In which case, at the death of *C.*, without issue, *D.*, being a natural-born subject, would, in preference to *B.*, be the heir of *C.* But, in no case, as stated by Sir Wm. Blackstone, in his Commentaries (*f*), would *X.* be so entitled, although the child of the eldest brother, and who would, were it not for his father being an alien, be entitled under the third rule or canon of descent, as stated by Sir Wm. Blackstone (*g*); that the eldest of males in equal degree shall inherit in preference to the younger; and the fourth rule or canon (*h*), that the lineal descendants *in infinitum* of any person shall represent

(*f*) 2 Comm. 251. (*g*) Ibid. 214. (*h*) Ibid. 216.

their ancestor, as under the stat. of 25 Geo. 2, c. 39, *X.* would not have been in being, and capable to take as heir at the death of *C.*

Another case of pedigree under these statutes may be stated thus:



On the death of *C.* without issue, *D.*, although a female, being a natural-born subject, would, in preference to *B.*, being an alien, be the heir of *C.* But *E.*, if a son, being a natural-born subject, notwithstanding the estate had vested in *D.*, would become, under the provisions of the 11 & 12 Will. 3, c. 6, and 25 Geo. 2, c. 39,—and which are drawn from the second canon or rule of descent stated by Sir Wm. Blackstone, that the male line will be admitted before the female (*i*),—entitled as heir in preference to *D.*, and *D.*'s estate would accordingly become divested in favour of *E.*; and if *E.* were a female,

(*i*) 2 Bl. Comm. 212.

then equally would the estate of *D.* become divested; and according to the provisions of the same Act of Parliament,—drawn from the third rule or canon of descent, as stated by Sir Wm. Blackstone, that where there are three, or two, or more females, they shall all inherit together (*k*), or, as it is called, in coparcenary,—*E.* would become entitled equally with *D.*, and this divesting would in either case take place in preference to any claim by *X.*

The same rules of inheritance are, by the 16th Geo. 3, c. 52, extended to and applicable to persons deriving their descent from aliens, and, as such, claiming landed property in Scotland.

Although in the statutes of 11 & 12 Will. 3, c. 6, and 25 Geo. 2, c. 39, no express reference is made to Ireland, still it is apprehended that the same statute would affect Ireland, and that the same rules of descent would be observed in both countries; for the children of aliens being by birth, in England, natural-born subjects of the king, would, as it is apprehended, be natural-born subjects as far as relates to their rights to hold real estates in Ireland, and to make out their title as such by virtue of the

(*k*) 2 Bl. Comm. 214.

provisions of the 11 & 12 Will. 3, c. 6, and 25 Geo. 2, c. 39 (*l*).

It must be observed, however, that there is a case of *Godfrey* v. *Dixon*, which is reported in Cro. Jac. Rep. (*m*), the facts of which were as follows: Cornelius Godfrey, an alien of Spain, had issue, Daniel, born in Flanders, in the allegiance of the King of Spain; the father and son came into England in the year of 4th Elizabeth. The father is made a denizen, and after hath issue, Cornelius, his younger son, born here in England. The father dies; afterwards the eldest son, Daniel, is naturalized by Parliament, and after purchaseth copyhold land, and dies without issue; and the second son, Cornelius, claimed the land as heir to his brother; and it was held, that the second son might inherit to his brother. The words of the naturalization in that case were these: "That Daniel shall be enabled to purchase, inherit, have, and enjoy, and demand as heir to any ancestor, lineal or collateral; and that he shall be adjudged a natural subject of the kingdom of England, in every respect, condition, and degree, to all intents, constructions, and purposes." The doubt only grew upon

(*l*) *See* Bacon's Abr. 7th edit. vol. 1, p. 170, as to the effect of a naturalization in England with regard to Ireland.

(*m*) P. 539.

these words, because it is enacted, that he shall be heir to his ancestor, lineal or collateral; but it is not said, that they shall be heirs unto him; and it was objected, that at the time of the father's death, the eldest son had no inheritable blood in him, and in defect thereof, the youngest son might not be heir unto him. But it was thereto answered, that true it is there was a disability, but not in blood; viz., his blood was not the cause of his disability, but the place of his birth; for the law respects not the blood, where there is not any allegiance.

The rules of inheritance are considerably altered by the statute of the 3 Will. 4, c. 106. It is apprehended, however, that the last-mentioned statute does not in the least degree affect the provisions of the statutes of 11 & 12 Will. 3, c. 6; 25 Geo. 2, c. 39, and 16 Geo. 3, c. 52; especially as by the 5th section of the 3 & 4 Will. 4, c. 106, brothers and sisters are to trace their descent through their parent; and it is also apprehended that no person who otherwise would be entitled as heir under the provisions of the last-mentioned statute, would be entitled as heir to any person seised of property in contradiction to the provisions of the statutes of the 11 & 12 Will. 3, c. 6, 25 Geo. 2, c. 39, and 16 Geo. 3, c. 52.

CHAPTER VII.

AS TO AN ALIEN'S RIGHTS TO BRING AND DEFEND ACTIONS AT COMMON LAW.

As before observed, the right of an alien to bring an action depends on the question whether he is an alien enemy or not, and as to whether such an alien enemy has a licence to trade or not; and, as before observed, an alien friend may maintain personal actions, while an alien enemy cannot maintain any action at all, and even it is doubtful whether any action can be maintained in his favour, unless in the case of his being licensed to trade (*a*). But a licence must be fully proved; for in the case of *Boulton* v. *Dobree* (*b*) it was held that to prove a replication of licence to a plea of alien enemy, it is not enough to prove that a licence was granted to the plaintiff, with an allowance to undertake a voyage, which did not terminate until the commencement of hostilities, and that after the termination of the voyage he was at

(*a*) *See* chap. 2, *supra*, p. 101.
(*b*) 2 Camp. 163.

large here without molestation. And in the case of *Alciator* v. *Smith*(*c*) it was also held that it would not be sufficient to prove that a licence was granted under 38 Geo. 3, c. 77, which expired with that statute, and that he had also remained without molestation. But neither an alien enemy or alien friend can maintain real, or, as it appears, mixed actions(*d*), and such an alien as would not be entitled to sue by himself, would not be entitled to join in any action(*e*). But although an alien would not in his own right be entitled to maintain a real or mixed action, yet it appears he may sustain such an action in the right of another person(*f*); and it appears also to have been holden, that notwithstanding the stat. 3 Rich. 2, c. 3, 7 Rich. 3,

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(*c*) 3 Camp. 245.

(*d*) Co. Litt. 129 a. It may be observed, that personal actions are such whereby a man claims a debt, or personal duty, or damages in lieu thereof; and, likewise, whereby a man claims a satisfaction in damages for some injury done to his person or property. Real actions, which concern real property only, are such whereby the plaintiff, here called the demandant, claims title to have any lands or tenements, rents, commons, or other hereditaments, in fee-simple, fee-tail, or for term of life. And mixed actions are suits partaking of the nature of the other two, wherein some real property is demanded, and also personal damages for a wrong sustained. Black. Comm. vol. 3, pp. 117 & 118.

(*e*) Jenk. 130, pl. 64, citing 4 E. 4–9.

(*f*) *See* Co. Litt. 129 a & b.

c. 12, and 1 Hen. 5, c. 7, an alien, incumbent on an ecclesiastical benefice, may, in his corporate capacity, maintain an action concerning the glebe, tithes, &c. (*g*).

In the case of an action brought by an alien enemy, alienage may be pleaded, and will be an answer to the action, and the same may be said of real and mixed actions, where they are brought by an alien in his own right (*h*). But in a plea of alienage the defendant must state not only that the plaintiff was born in a foreign country at enmity with this country, but that he came here without letters of safe conduct from our sovereign (*i*). If, however, in answer to such plea the plaintiff shall allege that he is not an alien, and should accordingly file such a replication, he must show where he was born (*k*). And if an alien, trading under the Queen's protection, sue, and alienage is pleaded against him, it appears that he ought to reply whether his protection be general or special (*l*); but although it appears that alienage may be

(*g*) *See* Bac. Abr. 7th edit. tit. *Alien*, D. citing Hughes's Parson's Law, c. 10; cites *Dr. Seaton's Case*, M. 8 Jac. 1. C. B.

(*h*) *See* Viner's Abr. tit. *Alien*, and the cases there stated.

(*i*) *See* the case of *Casseres* v. *Bell*, 8 Term Rep. 166.

(*k*) Br. *Barre*, pl. 63.

(*l*) Viner's Abr. tit. *Alien*, I. pl. 22.

pleaded after imparlance as well as to the writ before imparlance (*m*), still if a plaintiff alien has been allowed to recover judgment in any action, alienage will not be allowed to be pleaded to a *scire facias* on a judgment (*n*); and where an alien does not become alien enemy till after verdict, the execution and judgment will not be stayed (*o*); and the objection that the alien principal on whose behalf a British agent is suing in assumpsit in his own name, has become an enemy since the contract was made, cannot be taken under the general issue (*p*). It is to be observed that where alien enmity is pleaded, such plea must anticipate every answer which can be given to it, and negative every right in the plaintiff which would entitle him, though an alien enemy, to sue (*q*); and a plea of alien enmity cannot be joined with any plea which admits that the plaintiff has a *locus standi* in court (*r*). But it appears to have been decided in *Openheimer* v. *Levy* (*s*), that to a sim-

(*m*) Jenk. 130, pl. 64.

(*n*) *West* v. *Sutton*, 2 Ld. Raym. 853.

(*o*) *Vanbrynen* v. *Wilson*, 9 East, 321.

(*p*) *Flindt* v. *Waters*, 15 East, 260.

(*q*) *Casseres* v. *Bell*, 8 T. R. 166.

(*r*) *Shombeck* v. *De la Cour*, 10 East, 326; *Truckenhodt* v. *Payne*, 12 East, 206.

(*s*) 2 Str. 1082.

ple plea of alienage it is not necessary to reply that the plaintiff is not an alien enemy.

As to who is an alien friend, and who an alien enemy, *see supra*, chap. 2.

Alien enemies have been favoured in some few instances: thus, in the case of *Anthon* v. *Fisher* (*t*), it was held that, although an alien enemy cannot by the municipal law of this country sue for the recovery of a right claimed to be acquired by him in actual war, it was no objection (at least on the plea of non-assumpsit) that the plaintiff was an alien enemy. And it has also been held that an action was maintainable by an alien enemy, upon a ransom bill (*u*), even where the hostage died in prison (*x*). And an alien enemy has been admitted, after the return of peace, and in default of the Crown enforcing the same for its own benefit, to sue on a contract entered into by him while a prisoner of war (*y*). But it is to be observed that the case of *Anthon* v. *Fisher* was afterwards heard before all the judges in the Exchequer Chamber, by whom the former decision was reversed, and the unanimous opinion of the

(*t*) 2 Doug. 649, n.

(*u*) *Ricord* v. *Bettenham*, 3 Burr. 1734; and *see* the case of *Cornu* v. *Blackborne*, 2 Doug. 649.

(*x*) *Ricord* v. *Bettenham*, 1 Wm. Bl. 563.

(*y*) *Maria* v. *Hall*, 1 Taunt. 33, n.

judges who decided the case in the Exchequer Chamber appears to have been that an alien enemy cannot by the municipal law of this country sue for the recovery of a right claimed to be acquired by him in actual war (*z*). All questions, however, as to the law of ransom are now put an end to (*a*). At the same time it may be observed, that a native of a neutral state taken fighting on board an enemy's ship, and afterwards working his way to England as a seaman on board a British ship, has been held entitled to sue for his wages (*b*).

It may be observed that, with respect to who is an alien enemy or not, the mere fact that a party is resident within an enemy's country is no proof that he is adhering to the enemy. *Non constat,* that he may not be detained there against his will. It must be shown further, that he had a fair opportunity of leaving the country, which he neglected (*c*). It has also been held that an alien enemy could not on a contract entered into during war communicate any right to sue in respect of the contract to a

(*z*) *See* Douglas's Rep., 4th edit. 2d vol. p. 649, note † 132; and *see* Mitf. on Pleadings, 4th edit. p. 229, note (*z*).

(*a*) 2 Doug. 650, note.

(*b*) *Sparenburgh* v. *Bannatyne,* 1 Bos. & Pull. 163; but *see Maria* v. *Hall,* 1 Taunt. 33.

(*c*) See *Roberts* v. *Hardy,* 3 Maule & Selw. 533.

British subject (*d*). Still it has been held that where two British subjects, who were detained prisoners in France, and one of them drew bills payable to the other on another British subject resident in England, which the payee indorsed to an alien enemy, the alien enemy might, on the return of peace, recover the amount of the bills from the acceptor (*e*); but where a person does not become an alien enemy till after the contract has been entered into, it appears that he will not be debarred from suing on such a contract (*f*).

To the same extent as contracts with alien enemies have not been favoured, it appears that it is against the policy of the laws that an alien enemy should be allowed to effect an insurance on his goods, and that such a policy must be illegal on the face of it; but the courts of law will not grant new trials to let in the defendant to show by evidence that an insurance was upon a trading with an enemy (*g*). Alien enemies have not, however, been allowed to maintain actions in respect of such policies of insurance.

(*d*) *Willison* v. *Pattison*, 1 Moore, 133; S. C. 7 Taunt. 439.

(*e*) *Antoine* v. *Morshead*, 1 Mar. 558.

(*f*) *Vanbrynen* v. *Wilson*, 9 East, 321; and *Flindt* v. *Waters*, 15 East, 260.

(*g*) *See* Marshall on Insurance, vol. 1, p. 30, *et seq.*, and *Gist* v. *Mason*, 1 Term Rep. 84.

Thus, in the case of *Brandon* v. *Nesbitt* (*h*), which was an action on a policy of insurance on goods on board the Greyhound, an American ship at and from London to Bayonne, effected for the benefit and on the account of alien enemies, such action being brought in the name of an English agent for the benefit of the aliens, it was held that such an action could not be maintained, and a plea to such an action was accordingly allowed. Lord Kenyon, in that case, said, "The Court were of opinion that judgment must be given for the defendant, on this ground, that an action will not lie either by or in favour of an alien enemy. That the case of *Anthon* v. *Fisher* (*i*), which was decided in this Court, and whose judgment was afterwards confirmed in the Exchequer Chamber (*k*), proceeded on the same principle. That they had not found a single case in which the action had been supported in favour of an alien enemy. For though it was held in *Ricord* v. *Bettenham* (*l*) that the action by an enemy on a ransom bill might be maintained, the action was not brought until peace was restored, which gets rid of the objec-

(*h*) 6 Term Rep. 23.
(*i*) Douglas, 648, note 1.
(*k*) Ibid. 649, note † 132.
(*l*) 3 Burr. 1734, and 1 Bl. Rep. 563.

tion." And in the subsequent case of *Bristow* v. *Towers* (*m*), and which was an action upon a policy of insurance, on goods on board a ship, stated to be an American ship, at and from London to Dunkirk, and which was effected by an English subject for the benefit of certain persons trading under the firm of Arrouet & Massot, one Jean Baptiste Barrot, and several other persons by name, and who were alien enemies, the same principle was followed as was acted upon in the case of *Brandon* v. *Nesbitt*. And again in the case of *Potts* v. *Bell* (*n*) it was held that trading with an enemy without the king's licence is illegal; and that it is illegal for a subject in time of war, without the king's licence, to bring, even in a neutral ship, goods from an enemy's port which were purchased by his agent resident in the enemy's country after the commencement of hostilities, although it may not appear that they were purchased of an enemy; and an insurance made to protect such goods was accordingly declared void. The same principle was followed in the case of *Furtado* v. *Rodgers* (*o*), which was a case where an insurance

(*m*) 6 Term Rep. 35.

(*n*) 8 Term Rep. 548.

(*o*) 3 Bos. & Pull. 191; *see* also the case of *Kellner* v. *Le Mesurier*, 4 East, 396, and *Lubbock* v. *Potts*, 7 East, 451.

had been effected in Great Britain on a foreign ship, previous to the commencement of hostilities between Great Britain and France, and such insurance was held not to cover a loss by British capture. With respect to a neutral, it was held, in the case of *Bromley* v. *Hesseltine* (*p*), that though he should himself be resident in a place occupied by the enemy, an insurance on goods, his property, to a neutral or friendly port is valid, though it was in the same case doubted whether an insurance on goods, the property of a neutral, to a port occupied by the enemy, was void. Lord Ellenborough in that case said, "I don't know that merely because an alien happens to be resident in an enemy's country, goods to be delivered for him at a neutral or friendly port, are on that account uninsurable. Suppose a British merchant to be entrapped and confined in an enemy's country, it can scarcely be said that all the trade he may still carry on is in aid of the king's enemies, illegal, and incapable of being insured." In the case of *Visger* v. *Prescott* (*q*), however, it was held that neutral property taken by a king's ship, though the Court of Admiralty pronounce for good cause of

(*p*) 1 Camp. 75; *see* also the cases of *Barker* v. *Blakes*, 4 East, 283, and *Rotch* v. *Edie*, 4 T. R. 413.

(*q*) 5 Esp. 184.

seizure, but ordered to be restored, is lawful object of insurance.

With respect to policies of insurance in which other persons are entitled jointly with aliens, it has been held, in the case of *Hagedorn* v. *Bazett* (*r*), that if several persons by accident and without communication with each other, employ one common agent to effect insurances on their property, who accordingly insures the whole under one policy, the circumstances of some being aliens, and so the policy *quoad* them being void, will not vitiate it *quoad* the others, but it may be apportioned; although in the case of *Roberts* v. *Hardy* (*s*), it was held that where a demand is due to two, and one is an alien enemy, the other cannot enforce it; for it is clearly settled that a subject of this country shall not enter into an assurance that will have the effect of protecting the property of persons who are subjects of a country in hostility with this; for the consequence of permitting such an assurance would be, that it would be a complete indemnity against capture, either by his majesty's ships, or private ships authorised by letter of marque to make prizes, and the loss would fall upon British subjects. This prin-

(*r*) 1 Maule & Selwyn, 100.
(*s*) 3 Maule & Selwyn, 533.

ciple was carried out in the case of *Exparte Lee* (*t*), where a proof which had been allowed by the commissioners for a debt which arose under a policy of insurance on behalf of French subjects during the peace, just before the commencement of the war, upon which policy a total loss was incurred by capture by a British ship after hostilities had commenced, was ordered to be expunged.

It remains to be observed, that it has been decided in the case of *Boulton* v. *Dobree* (*u*), that a licence to an alien to import does not authorise him to remain here, or sue on a policy.

In the case of peculiar hardship, the courts appear to have been desirous of relaxing the rule as to contracts with alien enemies. These cases arose on certain bills which were drawn by one British subject, when a prisoner of war, in favour of another, on a British subject in England, and indorsed by the payee to an alien enemy; the courts acting in those cases on the principle, that the contracts entered into there were not in favour of an alien enemy, but by one British subject in favour of another, upon a British subject (*x*).

(*t*) 13 Ves. 64.

(*u*) 2 Camp. 163.

(*x*) See *Antoine* v. *Morshead*, 6 Taunt. 237, and *Daubuz* v. *Morshead*, ib. 332.

Where, however, a contract has been entered into with an alien enemy before the war, the right of enforcing it is merely suspended during the continuance of hostilities, and peace being restored, the parties will be allowed to carry it into effect. And if an alien resides in England, and afterwards war is proclaimed between this country and the country of which such alien is a subject, thereby, as it were, making him an alien enemy, his goods cannot be taken away from him (*y*).

As to an alien executor maintaining an action, the better opinion would appear to be, that whether alien enemy, or alien friend, he may maintain such an action, as such action would not be in his own right; and unless such were the case, the creditors of a testator would be prejudiced by the executor not being able to get in the assets of his testator (*z*). And it has been held that an alien enemy administrator may maintain an action as administrator (*a*).

In the case of *Pisani* v. *Lawson* (*b*), it was held that an action of libel (being a personal

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(*y*) Br. *Property*, pl. 38 ; and Jenk. 201, pl. 22.

(*z*) Williams on Executors, vol. 1, p. 163, and Bac. Abr. tit. *Alien*, D.

(*a*) *Brooks* v. *Phillips*, Cro. Eliz. 683.

(*b*) 8 Scott, 182.

action) published in this country may be maintained by an alien friend, even although he has never been in this country.

Of course if an action is brought by an alien resident abroad, he will, on application for that purpose by the defendant in the action, be bound to give security for costs.

As to the manner of examining foreign witnesses at law, *see supra*, chap. 2.

CHAPTER VIII.

AS TO AN ALIEN'S RIGHT TO BRING AND DEFEND SUITS IN EQUITY.

THE right of an alien friend to sue in a court of equity appears to have never,—except in the case of the *King of Spain* v. *Hullett* (*a*), hereafter referred to,—been doubted; and the only effect of his alienage seems to have been to deprive him of the property which might be the object of the suit (*b*). The case of the *King of Spain* v. *Hullett* was a bill for discovery, and for payment into court of certain monies which the King of Spain claimed, as having been received by his agent from the French Government, in satisfaction of certain claims of Spanish subjects in France, but which monies his agent had brought to this country and deposited in the hands of the defendants to the suit. That bill was demurred to for want of equity; and it was contended, on the part of the defendants, that it had never been

(*a*) 1 Dow & Clark, 169.

(*b*) *See* Mitf. on Plead. 4th edit. p. 24, note (*n*).

held that a foreign sovereign could sue in equity in this country; and the demurrer having been overruled, on argument before Lord Chancellor Lyndhurst, that decision was brought, by way of appeal, to the House of Lords; and one of the reasons stated in the case of the appellants was this, "Because it has never been held that a foreign sovereign can sue in courts of equity in England; and according to the principles of such courts, such a plaintiff ought not to be allowed to sue therein, inasmuch as by no possibility can process be issued with effect, or equity done, or a decree enforced against him." But the decision overruling the demurrer was affirmed by the House of Lords.

Although it was formerly doubtful, it appears to be now quite clear, that an alien infidel may sue in equity for a mere personal demand (*c*); and it even appears that an alien friend living abroad may also sue in equity (*d*).

It must also be observed that an alien friend may sue in equity in respect of a personal demand, but at the same time not in respect of a personal demand and in respect of lands or of a demand of a mixed nature; and it appears that to such a claim a plea of alienage simply

(*c*) *Ramkissenseat* v. *Barker*, 1 Atk. 51.
(*d*) Dyer, 26, pl. 8.

would be good (*e*). But it must be observed that, where real estate is or may be considered in equity as converted into money, an alien friend may sue for the same (*f*).

Although aliens cannot in the equity courts of this country, as against the Crown, recover real estates, either where the same have been specifically devised to them, or hold the same where purchased by them, or recover by way of foreclosure in the case of a mortgage of real estates made to them, unless under the circumstances before mentioned; yet aliens, whether friends or enemies, may, in the equity courts of Her Majesty's colonies in the West Indies, recover by way of foreclosure, real estates mortgaged to them (*g*).

It is proper, however, to mention here that

(*e*) Beames on Pleas in Equity, 114; and Mitf. on Plead. 4th edit. p. 229, note (*z*).

(*f*) *See* the case of *Du Hourmelin* v. *Sheldon*, 1 Beav. 79, and 4 Mylne & Craig, 525; and *see* same case more fully stated, *supra*, chap. 4, p. 137; and see *supra*, p. 147, as to a mortgage to a subject in favour of an alien, where the land is directed to be sold in default of payment of the money lent by the alien, and the money due to the alien paid out of the proceeds of the sale; and there is a clause in the mortgage deed preventing the alien foreclosing or receiving the rents and profits of the land.

(*g*) *See* the stat. 13 Geo. 3, c. 14, and the same more particularly referred to, *supra*, chap. 1, p. 45, & chap. 4, p. 147.

an agreement entered into between two alien friends while abroad and before they came into this country, even although the terms of it referred to the customs of the country where they were resident at the time the agreement was entered into, has been carried into effect in the courts of equity here. This was done in the case of a marriage contract or agreement entered into between two French refugees, while in France, and before they sought refuge in this country (*h*). The law, however, of foreign countries will be followed with respect to the rights of aliens, who are subjects of foreign states. This was held in the case of *Dues* v. *Smith* (*i*), where money belonging to the wife was paid to the husband, the parties being subjects of Denmark, and the law of that country not requiring a settlement.

If it is intended to dispute the right of an alien to sue in equity, a bill filed by an alien ought to be met by a plea showing that such a plaintiff as an alien is not entitled to relief; but such a plea must aver the person to be an alien, otherwise it is no bar (*k*). And it appears

(*h*) *See* the case of *Foubert* v. *Twist*, 1 Bro. P. C. 129, and Prec. Ch. 207.

(*i*) Jac. 544.

(*k*) *Burk* v. *Brown*, 2 Atk. 397.

that a plea of alien enemy, averring this nation to be at war with the government of France, and that the plaintiffs are Frenchmen, aliens, and enemies of the king, is sufficient (*l*).

A plea of alien enemy will be good to a bill for relief (*m*) and even to a bill for discovery, if it is in aid of an action (*n*); but query whether such a plea will be good to a bill for discovery merely as a defence to an action. This point was raised in the case of *Albretcht* v. *Sussman* (*o*); but it was not necessary to decide the point in that case; although, if the principle referred to in that case were carried out, such a plea would not probably be allowed as a bar to a bill of discovery as a defence to an action; for the principle seems to be, that as an alien on being sued at law would be allowed process to compel the attendance of his witnesses, he should have a discovery for the same purpose: and *see* the Vice-chancellor's (Sir Thomas Plumer) Judgment in the case of *Albretcht* v. *Sussman* (*p*).

It must be observed, however, that, as at law, an alien enemy, who might otherwise be dis-

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(*l*) *Daubigny* v. *Davallon*, 2 Anst. 462.
(*m*) 2 Ves. & Beames, 323.
(*n*) *Daubigny* v. *Davallon*, 2 Anst. 462.
(*o*) 2 Ves. & B. 323.
(*p*) Ibid. 326.

abled from suing here, may, where he is resident here by the licence or under the protection of the sovereign, even though he came here in time of war without a safe conduct, be entitled to sue in equity; and therefore it appears that in order to establish a plea of alien enemy to a bill filed by such an alien, the plea must state, not only that the plaintiff was born in a foreign country at enmity with this country, but that he came here without letters of safe conduct from the sovereign of this country (*q*); for it is said that where alien enemies by permission come here for refuge and live peaceably, the courts will greatly discountenance such plea of alien enemy (*r*).

As to the form of a plea of alien enemy, *see* Beames on Pleas in Equity, Appendix, p. 329.

In the same manner as an alien would not be entitled to sue in a court of equity for real property, he would not be entitled, when the Crown sets up a right to such property, to hold the same as against the Crown, or to object to discover whether he is an alien or not; and therefore a bill of discovery in respect of alienage has been enforced. Thus in the case of

(*q*) *Casseres* v. *Bell*, 8 Term Rep. 166, and Beames on Pleas in Equity, 113.

(*r*) Bohun's Cur. Can. 461; Wyatt's Prac. Reg. 300 & 327.

Attorney-general v. *Duplessis* (*s*), a devisee, who was an alien, and who claimed real estates under a devise, was ordered to put in an answer to a bill of discovery, filed for the purpose of discovering such alienage, and a demurrer to such bill was disallowed: for the known method of recovering estates, held by aliens, for the benefit of the Crown, is by a commission under the Great Seal, to inquire into the facts; and on the inquest finding them, to seise the estate into the king's hands; and in order to prove these facts, the king has the same right to a discovery by the assistance of a court of equity as the subject has, and founded on the same principle of justice, viz. that it is in general against conscience for any one to enjoy the property of another by concealing his right. And, in another case, where an information was filed against a person who had been in the service of the East India Company abroad, for an account of his dealings and transactions, and the defendant, in order to avoid the discovery, pleaded that he was an alien, that plea was over-ruled; it appearing that the defendant

(*s*) Parker, 144; S. C. 1 Bro. P. C. 415; *see* also *Daubigny* v. *Davallon*, 2 Anst. 462.

had acted both in a civil and judicial capacity, and had taken the oaths of allegiance (*t*).

With respect to an answer of an alien to a suit in equity, it appears that an alien stands on the same footing with ordinary suitors as to the rules and practice of courts of equity, and is bound to answer on oath; and even a foreign sovereign prince cannot put in an answer by his agent or without oath or signature, but must put in an answer on oath. The last point was held in the case of the *King of Spain* v. *Hullett* (*u*).

Where a commission issues to take the answer of a foreigner, a power to take it through an interpreter is virtually implied, if necessary; but the commissioners should certify that the defendant was duly sworn to such answer in the presence of the commissioners; and it should appear, by an affidavit of one of the commissioners, that the interpreter was duly sworn, and that he believed the defendant understood the contents of the answer, and such a certificate from the commissioners will be sufficient (*x*).

If a foreigner puts in an answer in his own

(*t*) *Attorney-general* v. *Bolts*, 1 Bro. P. C. 421.
(*u*) 1 Clark & Finn. 333.
(*x*) *Loughman* v. *Noaves*, 6 Price, 108.

language, a sworn translation must be filed with it (*y*).

For the form of the jurat of an answer of an heathen or disbeliever, *see* the case of *Ramkissenseat* v. *Barker* (*z*).

With regard to an injunction against a defendant who is an alien, it appears to have been the practice in the Exchequer not to grant one except upon affidavits of merit (*a*).

An alien plaintiff must, however, whether he is resident abroad or ordered out of the kingdom, give security for costs (*b*); and one of the Masters is to settle such security for costs (*c*).

As to the manner of examining foreign witnesses in equity, *see supra*, chap. 2.

(*y*) *Simmonds* v. *Du Barre*, 3 Bro. C. C. 263.
(*z*) 1 Atk. 19.
(*a*) Anon. Lofft, 545.
(*b*) *Seilaz* v. *Hanson*, 5 Ves. 261.
(*c*) *O'Dwyer* v. *Salvador*, Dick. 372.

CHAPTER IX.

AS TO AN ALIEN'S BEING SUBJECT TO THE BANKRUPT LAWS, AND HIS RIGHTS IN BANKRUPTCY.

ALIENS are, as observed in a former chapter (*a*), subject to, and have the advantage of the bankrupt laws.

An alien friend may be a trader, and sue in personal actions; it follows that he may be, to all intents and purposes, a partner. But an Englishman domiciled in a foreign country at war with this country, and, *à fortiori*, an alien enemy, cannot be a partner; at least, he cannot sue in this country for a debt due to the firm. "The reason," said Rooke, J., "of the disability of a person resident in an enemy's country is, that the fruits of the action may not be remitted to a hostile country, and so furnish resources against this country (*b*)." But a person is not disqualified from suing or taking out a fiat of bankruptcy, as a partner, although

(*a*) Chap. 2, *supra*, p. 104.

(*b*) *M'Connell* v. *Hector*, 3 B. & P. 113.

he be resident in an enemy's country, if he do not trade there, or if he be resident there for the purposes of trade, licensed by the government of this country; as, for instance, if he be resident for the purpose of receiving payments for licensed consignments (*c*).

In the case of *Ogden* v. *Peele* (*d*), *A.*, a native of America, and *B.*, a native of England, had dealings, by mutual consignments, previous to 1812. In June, 1812, war was declared between the two countries, and on the 24th December 1814 preliminaries of peace were signed at Ghent. A cargo of goods, consigned on account by *A.* to *B.*, arrived in England in November 1814, and were sent by *B.* to France, and there sold; and he received bills for the amount, which he got discounted. Another cargo so consigned arrived in England in January 1815, and was sold by *B.* before the 15th of February. In March, 1815, *B.* became bankrupt, and was appointed by his assignees their agent to wind up his affairs, in the course of which employment he received the proceeds of the second cargo, and transmitted accounts to *A.*, in which he admitted him to be his creditor for a balance in respect of the proceeds of both cargoes. In

(*c*) And *see* Coll. on Partnership, 2d edit. p. 9.
(*d*) 8 D. & R. 1.

an action by *A.* against the assignees of *B.*, to recover such balances, held, that *A.* was entitled to prove under *B.*'s commission for the balance due to him upon the second cargo only.

An alien trader resident in this country will, under the bankrupt laws, be liable to be made a bankrupt; but the evidence of trading, and the amount of debt for which a fiat may be issued out against him, will depend upon the general law regulating fiats of traders who are British-born subjects.

The right of an alien to sue out a fiat of bankruptcy against a trader, in this country, depends upon the question whether he is an alien friend or alien enemy. And although it is stated that an alien cannot be a petitioning creditor (*e*), it is apprehended that that must be confined to the case of an alien enemy. A fiat cannot be supported on the petition of a British subject residing in this country, for a debt due to himself and partners, also British subjects, but residing and trading in an enemy's country (*f*), even though he be naturalized in a neu-

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(*e*) *See* 1 Mont. & Ayrt., Bankruptcy, 1st edit. p. 20.

(*f*) *M'Connell* v. *Hector*, 3 Bos. & Pull. 113; see *De Metton* v. *De Mello*, 12 East, 234; S. C. 2 Camp. 420; *Kensington* v. *Inglis*, 8 East, 275.

tral state (*g*). It seems that the residence must be voluntary to create the disability (*h*). A British subject in an enemy's country for the purpose of trade, licensed so to do by our government, may issue a fiat here (*i*). It is apprehended that in all cases in which an alien would be entitled to bring an action of debt, he would be entitled to sue out a fiat, although an alien enemy would not be entitled to sue out a fiat.

The fact as to whether an alien be a friend or enemy will, as it is before observed, regulate his right to prove as a creditor under a fiat which may be sued out against a trader; and the right of a foreigner by contract, generally, is only suspended by a subsequent war, and may be enforced upon the restoration of peace. And although an alien cannot during hostilities prove a debt made on a contract before the commencement of hostilities, he may claim, and a claim will be entered accordingly. This was held in the case of *Exparte Boussmaker* (*k*). In that case the Lord Chancellor (Lord Erskine) said, alluding

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(*g*) *O'Mealey* v. *Wilson*, 1 Camp. 482.

(*h*) *Roberts* v. *Hardy*, 3 Mau. & Sel. 536; S. C. 2 Rose, 174.

(*i*) *Exparte Baglehole*, 18 Ves. 325; S. C. 1 Rose, 271.

(*k*) 13 Ves. 71.

to the debt which was sought to be proved, "If this had been a debt arising from a contract with an alien enemy, it could not possibly stand; for the contract would be void. But if the two nations were at peace at the date of the contract, from the time of war taking place the creditor could not sue; but the contract being originally good, upon the return of peace the right would survive. It would be contrary to justice, therefore, to confiscate this dividend. Though the right to recover is suspended, that is no reason why the fund should be divided among the other creditors. The point is of great moment, from the analogy to the case of an action; and, it is true, a court of law would not take notice of the objection without a plea. It must appear upon the record. Has the case of a contract originally good, and the right suspended by war, never before occurred? Yet I do not know an instance of an application by an alien enemy to the Court to keep the fund, until his right to sue should survive. The policy of avoiding contracts with an enemy, is sound and wise; but where the contract was originally good, and the remedy is only suspended, the proposition, that therefore the fund should be lost, is very different." Therefore the Lord Chancellor directed a claim to be entered, and the dividend to be reserved, although

nothing further is reported to have been done in this case; yet looking at the decisions in favour of the restoration of rights in such cases after peace is established, it is apprehended that such a claim would after peace be convertible into a proof. And even a British subject residing and trading in an enemy's country, unless such British subject has been licensed so to trade, will be in a similar situation as an alien, and will not be entitled to sue out a fiat here (*l*) A debt contracted during war is not proveable in peace (*m*).

Although an alien is allowed to prove under a fiat of bankruptcy, yet he must do equity; and if he does, or would be entitled to recover abroad any property of his debtors, he will not be entitled, when seeking to prove under a bankruptcy here, to prove, unless he elects not to seek for his remedy abroad. This was held in the case of *Exparte Chevalier, in re Vanzeller* (*n*), where a firm abroad drew bills on one of its own partners, trading on his own account in England, payable to an agent of the foreign government; the bills were not paid, and pro-

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(*l*) *M'Connell* v. *Hector*, 3 Bos. & Pull. 113; see *De Metton* v. *De Mello*, 12 East, 234; S. C. 2 Camp. 420; *Kensington* v. *Inglis*, 8 East, 275; *O'Mealey* v. *Wilson*, 1 Camp. 482.

(*m*) *Exparte Schmaling*, Buck. 93.

(*n*) 1 Mont. & Ayrton's Rep. 345.

cess of insolvency was issued against the foreign firm, and a commission against the English partner. In the 1st vol. of Mont. & Ayrt. Bankruptcy (*o*), it is stated to be doubtful whether where an alien creditor, after bankruptcy, recovered property due to him from the bankrupt, the assignees under the bankruptcy can obtain from such alien creditor the property so recovered by him, and the case of *Phillips* v. *Hunter* (*p*) is referred to. It is apprehended, however, that the assignees would be entitled to recover in such an action on the same principles as those in the case of *Exparte Chevalier*, and that case would apply. In the case of *Phillips* v. *Hunter*, *A.*, *B.*, and *C.* being partners in trade in England, *A.* and *B.* reside in England, and *C.* goes to a foreign country for the purpose of managing the concerns of the house in that country; *D.* is also resident in England, where a debt is contracted by *D.* to *A.*, *B.*, and *C.*; *D.* becomes insolvent, and *C.*, knowing that *D.* has stopped payment, and after a commission of bankruptcy has in fact issued against *D.*, attaches, in the name of himself and his partners, a debt due to *D.* in the foreign country, by legal process, and obtains payment of it under

(*o*) 1st edit. p. 258.
(*p*) 2 H. Bl. 402.

the judgment of a court of justice of that country; and it was held, that the assignees of *D.* had a right to recover the money so received by *C.* in an action against *A.*, *B.*, and *C.*, for money had and received to the use of the assignees. The case was heard before Mr. Justice Rooke, Mr. Baron Thompson, Mr. Justice Heath, Mr. Baron Perryn, Mr. Baron Hotham, and the Lord Chief Baron Macdonald, and Lord Chief Justice Eyre, all of whom, with the exception of Lord Chief Justice Eyre, decided that the action in that case was maintainable. Amongst some of the grounds of the judgment so decided by the major part of the judges who were present, are the following, namely, that the case must be argued as arising between English subjects upon English property. When the debt, therefore, was contracted, all the parties were as much subject to the bankrupt laws as to the other laws of England under which they lived. It is a proposition not to be disputed, that previous to the bankruptcy the bankrupts themselves might have transferred or assigned this property, though abroad, as absolutely as if it had been in their own tangible possession in this country; and it seems that the assignees under the commission were entitled by operation of law to do with it after the bankruptcy what the bank-

rupts themselves might have done before. The great principle of the bankrupt laws is justice, founded on equality. No creditor shall be permitted to acquire an undue preference, and, by so doing, prevent an equal distribution among all the creditors. This being the principle of those laws, it seems to follow, that the whole property of the bankrupt must be under their control, without regard to the locality of that property, except in cases which directly militate against the particular laws of the country in which it happens to be situated. No creditor, whose debt was contracted within the sphere of the operation of those laws, and who has notice of the insolvency of the debtor, can recover any part of the common fund for his own particular advantage. After an assignment has taken place, his interest is transferred to the assignees; and, if he do recover, he must account to the other creditors for the sum received. And as to an objection, that the judgment under which the creditor obtained the property abroad was final and conclusive, and bound the property as between the parties, that was admitted by the Judges; but it was held by them, that as the recovery of the creditor, otherwise than for the use of the assignees, would be in violation of an Act of Parliament, such recovery was to be taken to be for the use of the as-

signees(*q*). And the same principle was carried out in the case of *Hunter* v. *Potts*(*r*), and in a case in Chancery, of *Mackintosh* v. *Ogilvie*, referred to in *Hunter* v. *Potts*(*s*). It is true that the cases of *Phillips* v. *Hunter*, *Hunter* v. *Potts*, and *Mackintosh* v. *Ogilvie*, were decided with respect to British subjects who obtained the property abroad as creditors; still it is presumed that the same principles would apply with regard to an alien creditor obtaining property under the like circumstances, after he had been benefited by being entitled to prove under a bankruptcy here.

(*q*) *See* the Judgment in the case of *Phillips* v. *Hunter* as reported in 2 H. B. pp. 404, *et seq.*

(*r*) 4 Term Rep. 182.

(*s*) 4 T. Rep. 193, note (*a*).

CHAPTER X.

AS TO DENIZATION AND ITS EFFECTS.

ALTHOUGH originally by birth an alien, still a person so situated may obtain for himself a better station in life in this country, either by denization or naturalization.

Denization is obtained by means of letters patent, by which an alien is made an English subject, and thereby a kind of middle state between that of an alien and natural-born subject is acquired (*a*), the patents containing provisions that all persons made denizens should conform to the laws of this country, and specifying their privileges. It appears also that an alien may be made a denizen for a particular purpose only, as to enable him to sue (*b*), or be made a denizen in tail, for life, years, or upon condition (*c*). But in such a case the allegiance due from the denizen to the king would be temporary only, while that due from one made denizen altogether would be perpetual (*d*).

(*a*) 32 Hen. 8, c. 16, *supra*, p. 12, and 1 Black. Comm. 374; *see*, however, *supra*, chap. 1, p. 13, as to aliens having been made denizens by Act of Parliament. As to the definition of the word denizen, see *supra*, p. 5, note (*e*).

(*b*) Co. Litt. 129 b; Bacon's Abr., tit. *Alien*, B.

(*c*) Co. Litt. 129 a, citing *Calvin's Case*, 9 E. 4. 7; *see* also *Godfrey* v. *Dixon*, Cro. Jac. 539.

(*d*) Co. Litt. 129 a.

By the Act of denization the king grants "Quod ille (that is to say the denizen) in omnibus tractetur, reputetur, habeatur, teneatur, et gubernetur, tanquam ligeus noster infra dictum regnum nostrum Angliæ oriundum et non aliter nec aliter modo" (*e*), and the letters provide that the denizen shall do his liege homage, and that he will obey the laws of the realm; although this provision is not a condition, and the non-performance of it would not render the letters patent void (*f*). And by the Act of denization the person so made denizen is enabled to take lands by purchase or devise, but not by inheritance; for his parent, through whom he must claim, being an alien, had no inheritable blood in him (*g*).

With regard to the title to be acquired by an alien made denizen in lands there is the following case in Co. Litt. (*h*). If an alien be a disseisor, and obtain letters of denization, and then the disseisee release unto him, the king shall not have the land, for the release hath altered the estate, and it is as it were a new purchase; otherwise it is if the alien had been the feoffee of a disseisor.

(*e*) Co. Litt. 129 a.
(*f*) Bacon's Abr., tit. *Alien*, B.
(*g*) Co. Litt. 8 a; Bl. Comm. vol. 1, p. 374.
(*h*) 278 b.

But although the alien by the Act of denization is enabled to make purchases of lands or to take them by devise, still the letters patent would not, unless the letters patent are sufficiently extensive for that purpose, confirm purchases made by him previous to the letters of denization, and does not enable his children to inherit to him unless such children are born after the date of the letters patent, for the letters patent have not a retrospective operation.

The point with regard to the purchase of land before the date of the letters patent, where they were not sufficiently extensive for the purpose, was admitted in the case of *Eyston* v. *Symonds* (*i*); but where they were sufficiently extensive for that purpose, it was held in the case of *Fourdrin* v. *Gowdey* (*k*), that it might be retained after denization; and, with respect to the inheritance of an alien made denizen, it has been held that if an alien has a son an alien, and afterwards is made denizen, and hath a second son, the second son will inherit though not the first (*l*).

It must be observed, however, that, although by the letters patent a denizen is not entitled to

(*i*) *See* the Judgment of V. C. Knight Bruce in that case, 1 Y. & C. Ch. Cas. 612.

(*k*) 3 Mylne & Keen, 383.

(*l*) Co. Litt. 8 a; Cro. Jac. 539; and see *Fourdrin* v. *Gowdey*, 3 Mylne & Keen, 402.

inherit lands of his ancestor as heir at law, he may as a purchaser enjoy the same lands (*m*).

It must also be observed that, although in the case of an alien the king would be entitled to freehold property purchased by aliens, of whomsoever it was holden, the effect of the denization is such, that if an alien be made denizen, and afterwards purchases lands in fee without issue, the lord of the fee shall have the escheat and not the king (*n*).

Although an alien by the letters patent is to be treated and considered as one of the subjects of the realm, still he is so to be considered with this qualification, that he is not to be of the Privy Council or of either House of Parliament, or to have any office of trust either civil or military, or to have any grant of lands, tenements, or hereditaments from the Crown to himself, or to any other person or persons in trust for him (*o*).

A denizen is enabled to vote for Members of Parliament, provided such denizen is otherwise properly qualified.

The king alone can make aliens denizens (*p*).

(*m*) Viner's Abr., tit. *Alien*, citing Sty. 139.

(*n*) Co. Litt. 2 b.

(*o*) *See* the stat. 12 & 13 Will. 3, c. 2; and *see* the same more particularly referred to, *supra*, chap. 1, p. 19; *see* also Molloy, bk. 3, c. 3, s. 14, as to a denizen not being capable of nobility.

(*p*) *Calvin's Case*, 7 Rep. 25 b.

CHAPTER XI.

AS TO NATURALIZATION AND ITS EFFECTS.

As observed in the beginning of the last chapter, an alien may acquire for himself a better station in this country by naturalization, and by such naturalization he altogether acquires the rights of a British subject; for by the act of naturalization his allegiance is altogether changed, and his title to all real estates of which he continues seised at the time of the naturalization, is confirmed, and he is entitled to transmit to his issue, whether born before or after the act of naturalization, those inheritable rights which they would otherwise not have enjoyed.

This beneficial act of naturalization is obtained by Act of Parliament; but, in order to the obtaining such a benefit, and before a Bill brought into Parliament for that purpose is allowed to become a law of the land, the alien desirous of such a benefit must take the oath of allegiance and supremacy in the House of Parliament, before it is twice read in the House

where the Bill is brought in (*a*), unless he is prevented by bodily infirmity or sickness, or other sufficient cause, when such oaths may be taken before a justice of the peace, or mayor, or other chief magistrate of any county, or city, or town in Great Britain or Ireland, or before one of Her Majesty's judges or justices in any of Her Majesty's courts of judicature in the colonies or foreign possessions of Her Majesty (*b*).

The Bill for naturalization, however, must contain a disabling clause that the person to be naturalized should not be capable to be of the Privy Council, or a Member of either House of Parliament, or to enjoy any office or place of trust, either civil or military, or to have any grant of lands, tenements, or hereditaments from the Crown to himself, or to any other or others in trust for him (*c*). And also a clause declaring that such person should not thereby obtain or become entitled to claim within any foreign country any of the immunities and indulgences in trade which were or might be enjoyed or

(*a*) 7 Jac. 1, c. 2.

(*b*) 6 Geo. 4, c. 57.

(*c*) This is necessary from the provisions of the 3d sect. of the stat. 12 & 13 Will. 3, c. 2. As to dispensing with this provision in cases of foreign princes, and princesses, *see* the statute referred to in chap. 1, *supra*, p. 21.

claimed therein by natural-born British subjects, by virtue of any treaty or otherwise, unless such person should have inhabited and resided within Great Britain, or the dominions thereunto belonging, for the space of seven years subsequent to the first day of the session of Parliament in which the Bill of naturalization should have passed, and should not have been absent out of the same for a longer space than two months at any one time during the said seven years (*d*).

Naturalization may also be obtained by every foreign seaman, who, in time of war, serves two years on board an English ship, by virtue of the king's proclamation (*e*); and by all foreign Pro-

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(*d*) This is inserted in consequence of the stat. 14 Geo. 3, c. 84. As observed in the 1st chap., it was formerly necessary for every person who wished to be naturalized, to take the sacrament of the Lord's Supper previously to and within one month before the Bill for naturalization was brought into Parliament, *see* the stat. 7 Jac. 1, c. 2. As also observed in the 1st chap., the last-mentioned statute was abolished by the 6 Geo. 4, c. 67, *see* the 1st chap. *supra*, p. 80. It also appears that previous to applying for an Act of Parliament for naturalization, the party so applying must produce from the Secretary of the Home Department a certificate vouching for his good conduct and loyalty. *See* the Report of the Select Committee of the House of Commons, Appendix; but this does not appear to have been required by any of the Acts of Parliament.

(*e*) *See* the statutes referred to, *supra*, p. 69, note (*l*).

testants and Jews, upon their residing seven years in any of the American colonies, without being absent above two months at a time; and by all foreign Protestants serving two years in a military capacity there. But in these cases, as well as in the case of a person naturalized by Act of Parliament, the persons so to be naturalized must, before claiming the benefits of the same, take the oaths of allegiance and abjuration, unless, as to the American colonies, in the case of Quakers, when an affirmation will be sufficient, and they will not be at liberty to be of the Privy Council, or a Member of either House of Parliament, or to enjoy any office or place of trust, either civil or military, or to have any grant of lands, tenements, or hereditaments, from the Crown to themselves, or to any other or others in trust for him (*f*).

With regard to the offices of trust to be held by an alien when naturalized, it was decided, in the case of *Rex* v. *Mierre* (*g*), that a naturalized foreigner was not eligible into the office of constable.

By the act of naturalization the children of the person naturalized are placed in a much better situation than in the case of an alien

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(*f*) *See* the statutes referred to, *supra*, chap. 1.

(*g*) 5 Burr, 2d edit. 2787.

made denizen; for the issue of a person naturalized, although born before the naturalization was effected, would inherit to his father, even in preference to issue born in this country, which in the case of the denizen he would not have been entitled to do (*h*).

Although naturalization has a retrospective energy or operation with regard to admitting an eldest son, who would not otherwise have been entitled so to do, to inherit to his father's property, and in allowing the alien so naturalized to hold any land of which he continued seised at the time of the naturalization, such retrospective energy or operation does not appear to extend to confirm sales of property by an alien before naturalization. This was held in the case of *Fish* v. *Klein* (*i*). In that case an alien, devisee in trust to sell, joins in a conveyance, and afterwards obtains an Act of naturalization, by which it is declared that he is "from thenceforth" naturalized, and shall be and is enabled, "to ask, take, have, retain, and enjoy, &c., all lands which he may or shall have by purchase or gift of any person or persons whatsoever." In that case a question was raised whether the Act of naturalization would

(*h*) Co. Litt. 129 a, and 2 Bl. Comm. 250.
(*i*) 2 Mer. 431.

or would not have the effect of confirming a title derived from the alien devisee in trust before naturalization, and the contrary was held. The Master of the Rolls in that case holding that the estate being out of the alien at the time when the Act passed, and the Act itself being silent as to the conveyance in question, it was impossible to consider his alienee in any better situation, as to the title, than the alien himself (*k*).

See the case of *Godfrey* v. *Dixon*, Cro. Jac. 539, and *supra*, chap. 4(*l*), as to the effect of the naturalization of one brother, and thereby admitting the right of another brother to succeed to the real estates of the one so naturalized.

(*k*) The form of the Naturalization Act in the above case appears to be the usual one; and it appears that in that case the parties who applied for the Act in question were desirous of having retrospective words introduced into the Naturalization Act, but were not able. See *Fish* v. *Klein*, 2 Mer. 432, note (*a*).

(*l*) P. 158.

APPENDIX.

COPY OF THE REPORT MADE BY A SELECT COMMITTEE OF THE HOUSE OF COMMONS, ON THE 2D JUNE 1843.

THE laws affecting foreigners resident in this country remain substantially in the same state now as at the close of the reign of William the 3d.

The partiality which that sovereign exhibited toward the Dutch officers and dependants whom he brought with him into this kingdom, had excited in the public mind considerable jealousy and aversion towards strangers coming to settle here; and during his reign these feelings were further promoted by the near prospect of the accession to the British throne of George the 1st, also a foreigner, and surrounded by foreign favourites. The consequence was, that by the statute 12th & 13th of William 3, c. 2, foreigners were placed under rigorous civil disabilities. "No other country," says Mr. Hallam, referring to this statute, "as far as I am aware, has adopted such sweeping disqualifications."

The laws which have since been enacted, and which are now in force, for regulating the privileges of foreigners in this country (such as 1 Geo. 1, c. 4; 14 Geo. 3, c. 84; 3 & 4 Will. 4, c. 54 & 55), have rather aggravated than lightened the disabilities imposed on them by the Act of Settlement.

Aliens in Great Britain are debarred from the possession

of real property (*a*), and some description of personal property. They cannot take houses on lease for years (*b*), without danger of forfeiture. They cannot hold British registered shipping, nor shares therein. They cannot claim any commercial benefits by virtue of British treaties with other states, and they are absolutely excluded from all places and offices of trust, civil and military.

By obtaining from the Crown letters patent of denization, foreigners are relieved from these disabilities so far, that they can hold and transmit all kinds of real and personal property, but they can only transmit real property to such of their children as may have been born subsequent to their denization. They are also permitted, when otherwise qualified, to vote at elections of Members of Parliament.

By obtaining from Parliament an Act of naturalization, foreigners acquire all the privileges of denization, and a slight addition to them. Naturalized foreigners may inherit real property, and may transmit it to any of their children, without distinction as to the time of their birth; and when they have resided in this country seven years from the period of their naturalization, without having quitted it for more than two months at any one time, they become entitled to the benefit of British treaties in their commercial transactions with foreign states (*c*).

From the evidence taken before the Committee, it seems doubtful whether the disabilities imposed on persons of foreign birth, residing within Great Britain, are not more

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(*a*) As to the reason why aliens have not been permitted to hold real property in this country, see *supra*, chap. 4, p. 131.

(*b*) The question as to whether aliens are entitled to houses on lease for years depends on the fact whether they require them for habitation alone, or as incident to their trade; if the latter, such a lease will be good; see *supra*, chap. 3, p. 123.

(*c*) *See* the statute 14 Geo. 3, c. 84, *supra*, p. 56.

rigorous than those imposed on the same class of persons in other European countries.

Whatever may have been alleged in favour of the present system at the close of the 17th century, when it might be recommended by arguments derived from the political circumstances of the times, it cannot be justified now on any grounds of special expediency.

It has often been laid down by economical writers, that it is desirable for every people to encourage the settlement of foreigners among them, since by such means they will be practically instructed in what it most concerns them to know, and enabled to avail themselves of whatever foreign sagacity, ingenuity, or experience may have produced in art and science which is most perfect. Men seldom emigrate to a foreign country except to better their condition, and, under ordinary circumstances, the change can only better their condition when they are possessed of some skill, information, or economy superior to that in use in the country they repair to, the peculiar possession of which will compensate them for the many disadvantages they must otherwise, as strangers, encounter there. The immigration of such foreigners into any country must be attended with reciprocal advantages.

As an illustration of the practical benefits which might accrue from the migration of foreign skilled labour to this country, it was stated to the Committee, and indeed the fact is generally known, that the manufacture of piano-fortes was introduced into England about half a century ago by some Germans who settled in London; that now English manufacturers not only supply the demand of the home market, but that they export in considerable quantities, and sometimes into Germany itself, these products of their industry. If we go back to a more distant period, we shall find reason to doubt whether any country has so much profited

as our own by the influx of foreigners. When persecution drove the inhabitants of the north of Italy, of the Low Countries, and the south of France, from their own habitations, they crowded to our shores. They brought with them their wealth when they had any, and they brought what was far more valuable, their skill and enterprize, which they fixed and planted in England. And there can be no question that they abundantly repaid us, by instructing our people in various valuable employments of industry, for the asylum which our humanity accorded them.

Assuming then, that it is expedient rather to promote than to discourage the accession of skilful and industrious foreigners to the British community, Your Committee are of opinion that the mode of admission now in practice is open to objection on two grounds; first, the expense which attends the process, whether by Act of Parliament or by the Royal Prerogative; and, secondly, the delays by which it is accompanied.

Your Committee also consider that it is highly desirable to augment the privileges to be conferred on foreigners by naturalization.

The expenses attending the passing of an Act of naturalization have been represented to the Committee as not necessarily exceeding 100*l.* It may be doubted, however, whether all the charges incidental to the process are often defrayed by that sum. The sum, whatever it may practically be, appears not unfrequently sufficient to deter foreigners from seeking the benefit of an Act of naturalization, and to be generally exceptionable by reason of its amount. Although it has been stated to the Committee that Bills for naturalizing foreigners are never impeded in their progress through Parliament by opposition, considerable time is necessarily consumed before they can in any case receive the full sanction of the Legislature; and

of course an Act can be obtained at that portion of the year only during which Parliament is assembled. The delays and obstacles thus interposed are felt by foreigners as practical evils.

The number of foreigners naturalized in this country does not, on an average, exceed eight in the course of the year. Nor is this very surprising. The expense of an Act of Parliament is considerable, and the utmost latitude to which Parliament admits foreigners to the rights of British subjects amounts to little beyond the privilege of holding land in this country, as it is held by native subjects, a privilege which France and other European states throw open to all the world without restriction and without inquiry.

The privileges acquired by denization fall short even of this small immunity, yet the cost of letters patent of denization is not less than 120 *l.*

To spare so heavy an expense to individuals, it has been the ordinary practice of the Home-office, since the year 1795, to include the names of several parties, not exceeding seven, in the same instrument, among whom the official expenses are equally distributed. But this accommodation is only made available by deferring the preparation of the letters patent till there are as many as seven foreigners applying to the Secretary of State to be admitted as denizens, a course occasionally involving considerable delay. If in any instance it be found expedient to admit foreigners to the exercise of certain of the rights of British subjects, it would seem better that the act of grace should neither be interrupted in its course by delays, nor burthened with expenses.

At present the applicant to Parliament for an Act of naturalization is required to produce from the Secretary of State for the Home Department a certificate vouching for his good conduct and loyalty. Without such document

the House of Lords, with which these Acts always originate, would refuse to read the Bill a second time. The certificate being produced, the Bill proceeds through both Houses of Parliament without further question.

Denization is conferred by the authority of the Crown through the Home Secretary of State (*d*).

It does not appear that in either case any very careful examination is instituted into the circumstances or intents of the applicant. A statement, signed by any person whom the Secretary of State considered respectable, alleging that the foreigner seeking to be naturalized was known to him as a man of character, would be deemed a testimonial sufficient to warrant the official certificate, and letters of denization are granted with even less formality.

In both cases, it will be observed, that the power of conferring on, or withholding from, foreigners the rights of native subjects practically resides in the Secretary of State for the Home Department.

Your Committee are of opinion, that the Secretary of State might advantageously be invested with full authority to grant to foreigners all those rights, as well as the capacity to fill all of those offices and employments falling within the scope of the present inquiry, from which they are excluded by the Act of Settlement. The form of denization would thus be practically abolished, to which they may in future be admissible.

Your Committee are also of opinion that, in the exercise of this authority by the Secretary of State, it would be convenient to follow, in some respects, the precedent afforded by the Irish statute, 14 & 15 Chas. 2, c. 13; and then a licence or certificate, such as is now used for similar pur-

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(*d*) As to denization having been conferred by Act of Parliament, see *supra*, p. 13.

purposes by the Lord Lieutenant and Privy Council of Ireland, should be substituted for the expensive process of letters patent; but that, as the Committee contemplate the granting, by these means, to foreigners more considerable rights than are now conferred by an Act of Parliament, it would be desirable for the Secretary of State to require of each candidate for such privileges fuller proofs of his fitness for naturalization than he is now called upon to exhibit; and that one test of fitness assumed in the Irish law, viz. intent to settle and abide in the country, should be adopted also in Great Britain.

The most important branch of the inquiry referred to the Committee relates to the extent of British rights which it might be expedient to grant to resident foreigners by some form of naturalization.

With regard to foreigners of good repute, and especially manufacturers and artizans who have come to this country with the intent to settle here, it was doubted by several witnesses whether they ought to be denied any of the rights of native subjects which they can beneficially exercise. If they, who bring industrial advantages to this country, are willing to undertake all the duties of British subjects and to share in all British interests, it would seem a judicious policy to invest them also with all British privileges. The offer of these privileges would probably invite to our shores strangers very useful to our national interests. The remarkable success with which Venice, the Hans Towns, and more particularly Holland (as set forth in the state document called *La Richesse de la Hollande*), attracted to their territories the skill, ingenuity, and enterprise of other nations, by holding out to foreigners the boon of citizenship, and the extraordinary advantages which those states derived from it, is sufficiently familiar to every mind. Something of the same kind occurs in our own history.

In the reign of Charles the 2d, a period which has been emphatically called "the era of good laws," an Act was passed, awarding civil rights of every description to foreigners who should engage here in any of the various employments connected with hemp and flax manufactures, or with the manufacture of any kind of tapestry. The law is said to have proved very advantageous to British industry.

Some modification of this principle has been adopted by our Legislature in recent times, in the Acts "for encouraging Seamen to enter his Majesty's service;" "for naturalizing such foreign Protestants as shall settle in the American Colonies;" and "for encouraging the Fisheries."

The full principle was, however, adopted, and far more extensively applied in Ireland by 14 & 15 Chas. 2, c. 15, as a means of inducing foreign merchants and artificers to settle in that country.

This statute was limited in duration to seven years, but it was afterwards continued five years longer by the 2d Anne, c. 14, the preamble stating that it "had been found highly beneficial;" and the same recital was used in the preamble of the 4th Geo. 1, c. 9, by which the original statute was made perpetual. The statute related to foreign Protestants only; but the 23d & 24th Geo. 3, c. 38, passed by the Administration of Mr. Pitt, extended these privileges to foreigners of all religious persuasions, Jews only being excepted. This law is considered to be still in force in Ireland.

The English Act of Charles 2d, inviting certain classes of industrious foreigners to settle here, was of course repealed by the 12 & 13 Will. 3, c. 2, and those causes have long ceased to operate which once drove foreign manufacturers for refuge to England. Foreign industry no longer migrates to this country for an asylum; and while English artizans are settling freely in other countries, carrying with them

and disseminating a knowledge of those processes of manufacture to which this country is so much indebted for its commercial wealth and its political power, the laws of this country afford less inducement than might be desired to foreigners to settle here.

It cannot be in itself desirable for Great Britain, which is so deeply interested in trade and manufactures, to maintain laws which have a tendency to deter from settling here foreigners who may be better acquainted than our own people with processes, inventions, and discoveries important to the pursuits of industry. It cannot be desirable to create inducements to foreigners to carry away and disburse in other countries the wealth they have accumulated in this; and it would be difficult to assign a satisfactory reason why the State should be denied the services of a naturalized foreigner, if his superior skill, information, or ability gave him superior recommendation for employment.

For these reasons your Committee would recommend that provision should be made by law for the more easy admission of foreigners resident in this country to whatever rights the Legislature may think fit to invest them with, and that such rights should include the capacity to fill certain offices of trust, and employments civil and military.

Some doubts were expressed by one of the witnesses, to whose judgment and experience great deference is due, whether it would be expedient to invest a person of foreign birth with the functions of justice of the peace (*e*). Undoubtedly, an individual, to whom the language, laws, and customs of this country are not familiar, would seem ineligible for the magistracy; but this description is by no means universally applicable to those whom the laws of this country

(*e*) Lord Ashburton. As to a naturalized foreigner not being now eligible to the office of constable, see *supra*, chap. 11, p. 200.

consider foreigners. Some persons are deemed foreigners by the law who are and have always been members of the British community in every respect, save in legal technicalities. There are others who, by long residence in the kingdom (and especially where that residence has commenced in early life), and by close and constant intercourse with British society, are well qualified for performing the magisterial duties with efficiency, and in a way to ensure public satisfaction. Such persons, especially if in the latter class, as in the former, they should be connected with this country by landed property, by marriage, and by other social relations, appear to your Committee not ineligible for the commission of the peace; and as the fitness of each individual for the exercise of such functions is a matter of consideration with the Executive Government, your Committee do not recommend that any general disability to this effect should attach to naturalizing foreigners.

There are, however, other disabilities than those imposed on naturalized foreigners by the Act of Settlement, from which it is desirable that they should be released. By the 3 & 4 Will. 4, c. 54 & 55, persons of foreign birth are precluded from owning British registered shipping, so that the foreigner, acting as a merchant in London, is compelled by law to invest the capital he would have expended on British vessels in vessels built in other countries. "There are," says Mr. M'Gregor, in his evidence before the Committee, "foreign merchants who, instead of becoming proprietors of British ships, have invested their money in ships built at Archangel, Dantzic, and Rotterdam; and there are several foreign-built vessels in the Neapolitan trade similarly owned by British and Sicilian subjects."

But the evil does not end here. The foreign ship is of necessity manned with foreign seamen, in compliance with the navigation laws of other States; and, by one of the provisions in our own navigation laws, she is prevented

from importing into the United Kingdom any commodities except such as are the production of the country where she is registered; that is to say, a ship built in Hamburgh can import nothing into Great Britain which is produced in any other State of Europe (certain enumerated articles excepted), and nothing whatever which is produced in any country of Asia, Africa, or America!

By statute 14 of Geo. 3, c. 84, no naturalized foreigner is entitled to claim in any foreign country any of the immunities in trade enjoyed there by British subjects, unless he shall have resided in the United Kingdom seven years from the date of his Act of Parliament, never having quitted for more than two months at any one time. This law must prove a considerable obstacle to foreigners engaged in commerce in this kingdom; and the object with which it was enacted, that of preventing foreigners from obtaining the rights of British subjects, in order that, with those advantages acquired, they might transfer themselves to other countries, would be practically secured, if the intent to settle and abide in this country were rendered a condition of naturalization, and were investigated at the Home-office before granting the certificate.

Several of the witnesses examined by the Committee expressed a decided opinion that it would be expedient to permit aliens to acquire real property in this country with the same facility as in France and other European states (*f*). It is contended that foreigners are allowed to hold property in the funds to any extent; that by paying the cost of letters of denization they may acquire a legal right to hold any extent of land; that the law which forbids an alien to hold land is openly and easily evaded; and that this law, with

(*f*) Lord Brougham, A. W. Kinglake, Esq., Wm. Ward, Esq., and the Right hon. C. W. W. Wynn. The law of France appears to be that foreigners may hold land there in the same way as natives. This is stated by Lord Brougham in his evidence before the Committee.

all others to which the State cannot command obedience, would be much better abandoned and repealed.

On the other hand, it has been remarked that were a better system of conferring native rights on foreigners adopted, and were the process rendered less expensive and more expeditious than at present, little practical evil would accrue from rendering a foreigner's capacity to hold land dependent on naturalization; and that as in Great Britain certain civil and moral duties are considered to be attached to the possession of landed property, which could hardly be performed by non-resident aliens, it would be well for the State, on this ground, to refuse the capacity of holding real property to foreigners not domiciled in this country (*g*).

The attention of the Committee has been directed to the 4 & 5 Will. 4, c. 3 (*h*), called the Alien Act, which requires that every foreigner landing in this country shall immediately exhibit to the chief officer of customs at the port of his debarkation any passport in his possession, and shall declare to him, either verbally or in writing, his name, birth-place, and the country that he is coming from; and that he shall be subject to a penalty of 2*l.* for neglect or refusal. Such is the Act of Parliament; but it is very generally disregarded by foreigners, and it is never enforced by the authorities.

(*g*) Lord Ashburton, in his evidence, considered that the right of foreigners to hold real property should have been confined to those *bonâ fide* residents. *Qy.* As to the propriety of making the conditions of aliens holding real property dependent alone on their being domiciled in this country, as certain civil and moral duties are considered to be attached to the possession of landed property, which could hardly be performed by non-resident aliens; (*see* Report above) and as under such circumstances there might be some question raised as to how far the property might be retained in the case of domicile being changed. As to the reason why aliens are not at present entitled to hold real property, see *supra*, chap. 4, p. 131.

(*h*) The Alien Registration Act now in force is the stat. 6 & 7 Will. 4, chap. 11, for the provisions of which see *supra*, chap. 1, p. 72 *et seq.*

During the year 1842 it appears that, of the number of foreigners who were officially reported to have landed in London, less than one-half conformed to the provisions of this Act.

That during the same year, of 794 foreign persons who landed at Hull, one only registered.

That at Southampton, where 1,174 foreigners arrived in the course of the same year, not one registered.

That at Liverpool during the same year, no foreigners registered at all, and there was not even a report made of the number of their arrivals.

There is, in fact, no provision in the statute for recovering the penalties of disobedience; it is consequently only conformed to by such persons as are either ignorant of that defect, or are led to observe the law of the country from a sense of propriety.

As there is a general objection to the existence of laws to which obedience cannot be compelled, and as in this instance the restriction imposed, falls only on the orderly and obedient, while the negligent or contumacious enjoy impunity, and as, moreover, there is a certain annual expense incurred by the country for the machinery necessary to obtain this chance conformity, it seems desirable that the law should be altered or repealed.

Your Committee are unwilling to terminate the task they have accepted, without recording their opinion that it is highly expedient to consolidate and amend the whole law relating to alienage. At present that law is neither remarkable for clearness nor uniformity, and its operation is occasionally marked by harshness and injury.

The law of England recognises three sorts of naturalizing Acts, or, to use the words of Lord Bacon, the law takes notice of three degrees of persons in naturalization: 1st, naturalization by birth; 2d, naturalization by general statutes; 3d, naturalization by special Act of Parliament.

By the common law it was established that every one born within the liegeance of the king of England is an English subject, but some doubt is said to have existed, whether the children of English subjects born out of the liegeance of the king were entitled by the common law to that benefit. It was therefore enacted by the 25th Edward 3d, that all the children of English fathers and mothers born abroad should be naturalized, with three exceptions: 1st, if the parents were not at the time of such children's birth at faith and liegeance to the king; 2dly, if the children were illegitimate; 3dly, if the mother had crossed the seas without the leave of her husband.

The next general law on this subject is the 7th Anne, which naturalizes all the children of British subjects born out of the kingdom, without any of the conditions by which the operation of the ancient statute was restrained. Although, by a decision of the judges in the 16th year of Chas. 1st, in the case of *Bacon* v. *Bacon* (Cro. Car.), and in *King* v. *Eaton*, it was determined that children born abroad of English fathers were English subjects, yet in the reign of Geo. 2d it seems to have been thought doubtful whether by virtue of either of the above-named statutes the rights of native-born subjects were inherited by those children born abroad, one of whose parents only was a subject of England, and therefore recourse was had to Parliament.

By the statute 4 Geo. 2, c. 2 (*i*), which is intituled, "An Act to explain a clause in the 7th Anne," it is provided "that all children born out of the liegeance of the Crown of England or Great Britain, whose fathers were or shall be natural-born subjects of the Crown of England or of Great Britain at the time of the birth of such children respectively, shall by virtue of the Act of 7th Anne be taken

(*i*) This should be 4 Geo. 2, c. 21.

to be natural-born subjects to all intents, purposes, and constructions." Neither the Act of Anne nor that of George 2d notice at all the statute of Edward 3d, which had been declared, by two separate decisions, to naturalize all those whose fathers were English, and which seems to naturalize those also whose mothers were English.

Yet it was held by the Judges in 1791, in the case of *Duroure* v. *Jones*, that by the Act 4th George 2d, the heritable capacity is limited to the children of English fathers only; and such is generally taken to be the law of England at present. A child born abroad, therefore, of an English mother and foreign father, cannot succeed to the property of his mother, nor inherit the rights of a British subject (*k*).

Again, in regard to the descendants of British subjects by the paternal line, born abroad; by the stat. 13 Geo. 3, c. 2 (*l*), called an Act to extend the provisions of the 4 Geo. 2, c. 21, it is provided that all the children born abroad of those fathers who were naturalized by the Act of Geo. 2d, shall be naturalized by virtue of this Act of Geo. 3d; that is, the grand-children of British subjects shall be British subjects. If, however, the stat. 25 of Edw. 3d naturalized, in perpetual succession, all those whose fathers were subjects, as some persons have held, this law is plainly redundant and unnecessary.

Even the Act of Geo. 2d seems to make this statute redundant. By that Act the child of a British subject is a British subject; now a subject has of necessity the double capacity of inheriting and transmitting native rights, for

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(*k*) The question in the case of *Doe* dem. *Duroure* v. *Jones*, turned principally on the construction of the statute 25 Edw. 3, stat. 2, c. 2. As to the construction of the last-mentioned statute, see *supra*, p. 93, note (*e*), and p. 94.

(*l*) This should be 13 Geo. 3, c. 21.

Lord Bacon says, " there be but two conditions, native and alien, *nam tertium penitus ignoramus*;" but if in any case a British subject have ability to inherit and not ability to transmit his rights, then there must be a third or intermediate condition, which Lord Bacon denies is known to the law of England, and it cannot be pretended that the Act of Geo. 2d intended to set up so important a distinction.

Yet the preamble to the 13 Geo. 3, c. 2(*m*), recites that no provision hath hitherto been made to extend the heritable ability further than to the children born out of the liegeance of his majesty, whose fathers were natural-born subjects of the Crown of England or Great Britain; and then the statute goes on to enact that the next generation also shall be naturalized by birth.

So much doubt, indeed, hangs over this subject, that when a case arose a few years ago, in which a party whose grandfather had been born out of the British dominions wished to establish his rights as a British subject, and the opinions of the most eminent lawyers in the country were taken on the question, five of them held that he could inherit, and five that he could not. On the other hand, the Earl of Athlone, seventh in descent from Godart de Ginckell, created by King William, in March 1691-2, Earl of Athlone, and who claimed to take his seat in the Irish House of Peers in 1795 (more than a century after the family had left these kingdoms to reside in Holland), was admitted by that assembly to be a native-born subject of the British Crown, and he took his inheritance within the liegeance of the King accordingly.

Your Committee are of opinion, that it is very desirable that all these ambiguities should be removed.

The second sort of naturalizing Act is that which takes

(*m*) This should be 13 Geo. 3, c. 21.

place, not by birth, but by the compliance of an alien with conditions required by Parliament. These conditions are various.

The benefit of naturalization is offered by law to foreign persons serving two years on board British ships, upon proclamation in time of war; to foreigners residing seven years in the British colonies in America; to foreigners serving three years in the Northern whale fisheries, and two years in America; and in Ireland to foreigners admitted to the corporations of Drogheda and of Dublin. It is to be observed, that from these benefits there are some exclusions of persons professing the Catholic religion.

Your Committee are of opinion that it is highly expedient to consolidate and revise these scattered enactments, and to introduce into the law on this subject uniformity of principle and consistency of purpose.

The third sort of naturalization is that which takes place under private Acts of Parliament; Acts which are passed on the petitions of individuals, who acquire certain rights of native-born subjects, by paying the fees for passing these measures through Parliament, and by submitting to whatever conditions are imposed on such persons by laws relating to the naturalization of foreigners. This subject the Committee have already fully considered, and have recorded their opinions on it at length.

ADDENDUM.

PAGE 175, *after* line 15, *add* the following paragraph:—
A question has been lately raised before Lord Langdale, M. R., involving the question, firstly, as to how allegiance can be altered; and, secondly, how far a sovereign, who was also a subject of this kingdom, could, while here, be sued in his foreign capacity as sovereign, in respect of matters arising in his own dominions, and out of the dominions of the Crown of England. This point arose in the case of the *Duke of Brunswick* v. *The King of Hanover*. The bill, in that case, was filed by the Duke of Brunswick against the King of Hanover, while in this country, as Duke of Cumberland and Teviotdale and Earl of Armagh (the titles which the defendant had as a British subject), and praying that an appointment which had been made by King William the 4th, of the Duke of Cambridge, as guardian of the fortune and person of the plaintiff, and the subsequent appointment of the defendant, in his character of King of Hanover, as such guardian, might be declared void, and for relief consequent thereon. The question in the cause was raised on demurrer, for want of equity.

It was, amongst other things, argued on the part of the defendant, that the defendant was by the bill admitted to be King of Hanover, a sovereign prince, recognized by the Crown of England, and that it followed that his person was inviolable; and that this inviolability was not confined to the defendant's own dominions, but attended him wherever he went, and was consequently not affected by his being temporarily resident in a foreign kingdom of which he was

a subject;—that, even if liable to be sued in this country, he was not so liable in this suit, on account of its subject-matter, which was a matter of state, of a nature not subject to the jurisdiction of this court; but even if the matters were subject to our courts at all, they were subject only to those of special and peculiar jurisdiction, such as courts of bankruptcy, lunacy, &c.

The counsel for the plaintiff contended that the suit ought to be considered as one between subject and subject, for the plaintiff and the defendant were each of them lineal descendants of the Princess Sophia, and consequently were natural subjects; the plaintiff was domiciled; the defendant was born in this country, was a peer of the realm, and had taken the oath of allegiance; that no subject could withdraw from allegiance and subjection to the laws of the land, but must always remain subject; that the law afforded no authority to show that a sovereign prince might not be sued in the courts of this kingdom, for which position several cases were cited; that liability to suit did not necessarily involve liability to coercion, from which the defendant, a peer, was protected; that the Court had power to modify its process so as to do justice to the plaintiff, with due regard to the dignity of the defendant; that the general law and common interest of mankind required justice to be done all over the world; that the Queen was liable to be sued in a proper form; and it would be absurd to place a foreign sovereign residing in this country in a better situation.

Lord Langdale, in giving judgment (January 13, 1844), admitted the right of a foreign sovereign to sue in this country, at law and in equity; and with reference to a question which had been raised by the plaintiff, that foreign sovereigns were not entitled to the same immunities as ambassadors, for sovereigns came upon pleasure, said, "The law of nations included all regulations adopted by the com-

mon consent of nations; but where no usage could be found, recourse must be had to natural reason, and on this point there were no cases from which a custom could be collected. All the reasons for the immunity of ambassadors were not applicable to the case of a sovereign, for they might be compelled by their own prince and country to do justice. A prince not subject to a foreign power might, however, refuse to compel his ambassador to do justice: where a prevailing respect for humanity resided in his breast it was well; but the last result of any inquiry was, that war and reprisals were the sanctions of that which was called the law of nations. Where justice was to be requested against a person against whom there were no ordinary means of resorting for it, all cases of that kind were replete with difficulty. It appeared to him (Lord Langdale), that all the reasons of immunities to ambassadors did not apply to sovereigns, but there were reasons for the immunity of sovereigns stronger than those for the immunity of ambassadors. Even the failure of justice in particular cases would be less prejudicial than the violation of immunities." His Lordship, after referring to Vattel on the Law of Nations, concluded by saying that, "He could not venture to say that a subject bearing in another country the character of a prince, and so recognized, might not, by the recognition, be released from the allegiance he previously owed; but the present case must depend upon its own circumstances. Previously to his becoming a monarch the defendant was a subject of this realm, his accession to Hanover was contemporaneous with the accession of the Queen, and since then he had been so far from repudiating his allegiance that he had taken his seat in the House of Lords, and exercised his rights as an English peer. Coming into this country, not as King of Hanover but as a peer of the realm and a member of the Privy Council, could he be said to be

exempt from the laws of England? The admission of the inviolability of a sovereign required the responsibility of his advisers. Could any peer or privy councillor be permitted to give without responsibility advice to his sovereign, for giving which another peer or member of the Privy Council might have been impeached? If, upon entering into a contract, and refusing to perform it, such peer or privy councillor were not compellable to answer in a court of justice, great inconvenience would arise from the union of the two characters. The defendant claimed to exercise the rights of a soverign prince, and the rights of a peer and of a member of the Privy Council. As a subject he owed duties which the country had a legal right to have respected. He (Lord Langdale) thought that no just complaint could arise from legal proceedings, the object of which was to compel a sovereign prince, residing in the kingdom of another prince, whose subject he was, to perform acts which as such subject he was liable to perform. The King of Hanover was and ought to be exempt from all liability to be sued for any act done as King of Hanover, but as the subject of the Queen he was liable to be sued in respect of any act done by him, or in which he, as such subject, might be engaged. With respect to acts done by the defendant out of the realm, he (Lord Langdale) thought such acts ought to be presumed to have been done as a sovereign prince rather than as a subject. This was not an ordinary suit between subject and subject. It ought to have appeared upon the bill that the case was one in which the special immunities of the defendant ought not to prevent the suit. The case stated was that the defendant was liable to be sued and to account under the appointment of a guardianship of a nature unknown to the laws of England. Every act complained of was done abroad, in Brunswick, Hanover, or other foreign parts. No act was alleged to have been done

in this country, and there was strong reason to believe that it was only as King of Hanover that the defendant had been appointed guardian. The instrument was alleged to be null and void in this country. That was too vague an allegation. The instrument was stated as the sequel to a political revolution, the result of which was the deposition of the plaintiff. Considering the instrument as the sequel of political transactions, he should, if necessary to decide that question, be disposed to think that the instrument was in common parlance a state document, connected with other acts of state. It was not, however, necessary to give any opinion upon that point, or to decide whether as against a subject the Court could have had any jurisdiction to give relief in respect of acts done abroad under the instrument; for he was of opinion that the alleged acts of the defendant, under the instrument, were not acts in respect of which the defendant was liable to be sued in this court, or in respect of which the Court had jurisdiction. He must, therefore, allow this demurrer."

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